



51

PLANNING, ENVIRONMENTAL PROTECTION AND REGULATION





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Development Department

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PLANNING SERIES:

- **Scottish Planning Policies (SPPs)** provide statements of Scottish Executive policy on nationally important land use issues and other planning matters, supported where appropriate by a locational framework..
- **Circulars**, which also provide statements of Scottish Executive policy, contain guidance on policy implementation through legislative or procedural change.
- **Planning Advice Notes (PANs)** provide advice on good practice and other relevant information.

Statements of Scottish Executive policy contained in SPPs and Circulars may be material considerations to be taken into account in development plan preparation and development management.

Existing National Planning Policy Guidelines (NPPGs) have continued relevance to decision making, until such time as they are replaced by a SPP. The term SPP should be interpreted as including NPPGs.

Statements of Scottish Executive location specific planning policy, for example the West Edinburgh Planning Framework, have the same status in decision making as SPPs.

The National Planning Framework sets out the strategy for Scotland's long-term spatial development. It has the same status as SPPs and provides a national context for development plans and planning decisions and the ongoing programmes of the Scottish Executive, public agencies and local government.

Important Note: In the interests of brevity and conciseness, Scottish Planning Policies do NOT repeat policy across thematic boundaries. Each SPP takes as read the general policy in SPP1, and highlights the other SPPs where links to other related policy will be found. The whole series of SPPs should be taken as an integral policy suite and read together.

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INTRODUCTION

1. The environment and land of Scotland provide the basis for sustaining life, economic development and social well-being. A range of specific environmental protection regimes are designed to safeguard the natural and built environment. They operate alongside the land use planning system which aims to ensure that development takes place in suitable locations and is sustainable, while also providing protection from inappropriate development.

2. The central purpose of this Planning Advice Note (PAN) is to support the existing policy on the role of the planning system in relation to the environmental protection regimes. This is expressed in SPP1 as:

“Planning decisions should always be made on planning grounds and in the public interest. The planning system should not be used to secure objectives that are more properly achieved under other legislation. The grant of planning permission does not remove the need to seek other statutory consents nor does it imply that these consents will be forthcoming. Even where legal or administrative measures outwith the planning system may exist for controlling a particular activity, this can still be a consideration to which weight is given in reaching a planning decision. If a consideration is material in planning terms, it must be taken into account in reaching a decision. For example, the planning authority should have regard to the impact of a proposal on air or water quality although the regulation of emissions or discharges will fall to be dealt with under other legislation.” (paragraph 57 of SPP1)

3. This PAN also summarises the statutory responsibilities of the environmental protection bodies, as well as informing these bodies about the planning system. To minimise any overlap or duplication of controls it is essential that planning authorities and the protection agencies understand each other’s role and work together so that the controls are applied in a complementary way. This is important because many environmental protection decisions are based on quantitative standards whereas planning decisions have to take into account a much wider range of material considerations and the weight to be accorded them. Details of the environmental protection regimes referred to in this PAN are summarised in the Annex. The regimes include:

- Pollution Prevention and Control
- Protection of the Water Environment
- Drinking Water Quality – public and private water supplies
- Contaminated Land
- Radioactive Substances

- Statutory Nuisance including Noise
 - Litter
 - Light
 - Local Air Quality Management
 - Environmental Noise
4. More specific guidance has been issued on several environmental topics:

Waste – National Planning Policy Guideline (NPPG) 10 – *Planning and Waste Management* (March 1996) (under Review) and PAN 63 – *Waste Management Planning* (Feb 2002).

Minerals – Planning Advice Note (PAN) 50 and its annexes, issued from October 1996, deal with the specialist subject of *Controlling the Environmental Effects of Surface Mineral Workings*.

Noise – PAN 56 (1999) – *Planning and Noise*.

Environmental Impact Assessment – PAN 58 (1999), deals with requirements for EIAs to accompany specified types of applications.

Air Quality – Advice on air quality and land use planning is contained in *Local Air Quality Management – Revised Policy Guidance* (Scottish Executive February 2003)

This PAN does not provide a definitive statement of the statutory frameworks nor does it offer an authoritative interpretation of the legislation.

The arrangements explained in this revised PAN reflect major changes which have come into force since the original PAN was published in March 1997. It also takes forward the relevant recommendations from the research report “The Interaction Between Land Use Planning and Environmental Regulation” (SE 2004)-Environmental Resource Management Ltd (ERM) which has been a catalyst for this review.

BACKGROUND

PLANNING AND ENVIRONMENTAL PROTECTION

5. Planning legislation provides for a co-ordinated approach to improving the quality of the built environment and safeguarding the natural environment, as set out in the Town and Country Planning (Scotland) Act 1997 and the related Statutory Instruments. The changes proposed in the Planning Bill are not

expected to significantly alter the relationship between planning and environmental protection as set out in this PAN but some of the proposed measures have the potential to improve the interaction between the two systems in terms of efficiency and outcome in line with the recommendations of the ERM Research above. For environmental protection the important Acts and Regulations cover air pollution and integrated pollution control, activities liable to cause or pose a risk to the water environment, including abstraction of water, the impoundment of water in surface waters or wetlands, discharges to the water environment and river engineering works in or near to inland waters. The important provisions within this legislation and their main effects are set out below in paragraphs 14-31 under Scottish Environmental Protection Legislation, with the exception of the waste regulations which will be considered separately in SPP 10: Planning and Waste Management.

SUSTAINABLE DEVELOPMENT

6. Since the 1980s, concern for environmental protection, health and economic development has increasingly been interpreted through the concept of sustainable development. The Government approach has been set out in various documents such as *This Common Inheritance*. Scotland's present position is set out in the Sustainable Development Strategy, *Choosing our Future*, December 2005, which establishes measures that will be taken to turn the UK framework for sustainable development into action. It sets the context for a number of the Executive's new and emerging strategies on climate change, (*Changing our Ways, Scotland's Climate Change Programme*, March 2006), transport, renewable energy, energy efficiency, green jobs and biodiversity, all of which have land use implications. It affords particular priority to sustainable consumption and production; climate change and energy; natural resource protection and environmental enhancement; and sustainable communities. The basic principles are set out in the box below.

The UK Shared Framework: sets out the following principles for sustainable development:

- Living within environmental limits;
- Ensuring a strong, healthy and just society;
- Achieving a sustainable economy including ensuring environmental and social costs fall on those who impose them, (The Polluter Pays);
- Promoting good governance; and
- Using sound science responsibly, including consideration of the Precautionary Principle.

Choosing Our Future: Scotland's Sustainable Development Strategy-2005

7. Choosing Our Future explains the application of the precautionary principle to manage risk where there is scientific uncertainty (paragraph 9.22). It says that reasonable measures to prevent a serious or irreversible threat to health or the environment should not be postponed solely because we lack full scientific certainty about the threat itself, and that measures should however be proportionate and cost effective. Within that context, its application in planning should include consideration of:

- the potential benefits of the development;
- the role of the planning system in the control of siting and design; and
- the role of other legislation in the control of emissions or pollutants.

The principle applies particularly where there are good grounds for judging either that action taken promptly at comparatively low cost may avoid more costly damage later or that irreversible effects may follow if action is delayed.

8. SPP1 establishes the need for the planning system to encourage sustainable development and the commitment is reinforced in the Planning Bill. Additionally Scottish Natural Heritage (SNH) and the Scottish Environment Protection Agency (SEPA) have been given guidance on the contribution that their environmental protection responsibilities should make to sustainable development.

ENVIRONMENTAL POLLUTION

9. Pollution of the environment is generally “due to the release (into any environmental medium) from any process of substances which are capable of causing harm to man or to any other living organisms supported by the environment”, (Environmental Protection Act 1990, Part I Section 1(3)). There are separate definitions of pollution relating to waste in Part 11 of the Act and water in Section 20 of the WEWS Act. Pollution may also occur naturally, for example, the release of radon, a gaseous element emitted from some rocks which, beyond a certain threshold concentration, can be classed as a pollutant.
10. Historically, pollution control authorities focused largely on tackling the problems of point source pollution such as that arising from outfalls or chimneys. More recently, and as many of the major point sources of pollution have been addressed, there has been a growing awareness of the effects of non-point source or ‘diffuse’ pollution such as that arising from rainwater run-off from roads, industrial and residential areas, or certain agricultural practices. Sustainable drainage systems (SUDS) are a means of addressing this issue and further advice is given in PAN 61.

LEGISLATIVE CONTEXT

11. This section provides an outline of the main environmental protection and pollution control legislation of which planners should be aware. It sets the context with a look at European law and then briefly summarises relevant Scottish Legislation. It also provides a brief explanation of SEPA's powers and responsibilities

THE EUROPEAN DIMENSION

12. Much of our recent environmental protection legislation originates with the European Union (EU), mainly in the form of Directives but also Regulations and Decisions. They are transposed into UK law either directly through Acts of Parliament, for example, the EC Framework Directive on Waste was incorporated into Part II of the Environmental Protection Act 1990, or through Regulations as was the case with Environmental Impact Assessment. The Council of Ministers can also issue Recommendations or Opinions which may have no binding legal force but may have an influence on policy. The EU has taken a common approach to tackling pollution and environmental protection by developing a broad range of measures. Of particular relevance to planning are:
 - the Framework Directive on Waste and the Landfill Directive;
 - various Directives associated with Water (including the Water Framework Directive, the Bathing Waters Directive, the Drinking Water Directive and the Urban Waste Water Treatment Directive);
 - the Air Quality Framework Directive;
 - the Seveso II Directive in respect of Major Accident Hazards;
 - Access to Information on the Environment Directive;
 - the Environmental Noise Directive;
 - the Environmental Impact Assessment Directive;
 - the Strategic Environmental Assessment Directive(SEA); and
 - the Integrated Pollution, Prevention and Control Directive.

There are other EC Directives and policy measures which are also important though not part of a specific regime. The Directives on Habitats and Wild Birds have a number of implications for land use planning which should be recognised in development plans and development management decisions. These are briefly mentioned below and are more fully addressed in other planning guidance and advice, (NPPG 14 and PAN 60). EC environmental policy also covers the environmental standards of traded products in order to maintain common standards and a level playing field throughout the Single Market.

13. The Sixth Environment Action Programme of the European Community, Environment 2010: *Our Future, Our Choice* was established by the Decision of the European Parliament and the Council in July 2002. It constitutes a framework for the Community's environmental policy until 2012, with the aim of ensuring a high level of protection taking into account the principle of subsidiarity and the diversity of situations in the various regions of the community and of achieving a decoupling of environmental pressures from economic growth. It is based on the polluter pays principle, the precautionary principle and preventative action, and the principle of the rectification of pollution at source. It is wide ranging but identifies four priority environmental topics:
- Climate Change;
 - Nature and Biodiversity;
 - Environment and Health and quality of life; and
 - Natural Resources and Waste

The Programme and Decision can be seen at <http://europa.eu.int/comm/environment/newprg/>

SCOTTISH ENVIRONMENTAL PROTECTION LEGISLATION

The Control of Pollution Act 1974

14. The Control of Pollution Act 1974 (Part II) (COPA) (as amended – notably by Schedule 23 of the Water Act 1989 and Schedules 16 and 22 of the Environment Act 1995) has been superseded by the Water Environment and Water Services Act 2003 (WEWS) and the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (CAR), outlined below. The Control of Pollution Act Part III which controls noise from construction sites, and certain levels of road noise is still applicable.

The Environmental Protection Act 1990

15. The Environmental Protection Act 1990 controls many activities that are carried out, either on premises or by means of mobile plant, which are capable of causing significant pollution. These prescribed processes may operate only:

“if they hold an authorisation issued by the appropriate enforcing authority. For those that are potentially the most polluting or are technologically complex, the system requires that the processes be centrally controlled and that the authorisations must address discharges to air, water and land, thereby achieving the objective of ‘Integrated Pollution Control’ (IPC).”

Environmental Protection Act 1990 Part I, A Practical Guide – Central Control, 1992, para 1.1

16. The main pollution control provisions of the Environmental Protection Act 1990 (as amended by the Environment Act 1995) are indicated below.

**Main Pollution Control Provisions of the Environmental Protection Act 1990
(These provisions are not exhaustive)**

- Improving the control of pollution arising from certain industrial and other processes by introducing new regimes of Integrated Pollution Control (IPC) and Local Air Pollution Control (LAPC). The provisions of the Environmental Protection Act are being replaced between 2001 and 2007 by the Pollution Prevention and Control (Scotland) Regulations 2000. In Scotland, all PPC activities are regulated by SEPA. No distinction is made between PPC and LAPC. Installations are regulated according to their Part A or Part B status.
- Re-enacting the provisions of the Control of Pollution Act 1974 relating to waste on land, with modifications in respect of the functions of the regulatory and other authorities concerned in the collection and disposal of waste and to make further provision in relation to such waste. That includes the assessment of fit and proper persons to hold waste management licences and the extension of waste licensing to cover the treatment and keeping of waste. New controls in the 1990 Act require that waste management licences can only be surrendered where SEPA regards the condition of land to be satisfactory, and then a certificate of completion can be issued.
- Restating the law defining statutory nuisances and providing for the extension of the Clean Air Acts to prescribed gases. The statutory nuisance provisions initially applied to England and Wales and were extended to Scotland in April 1996.
- Conferring powers to obtain information about potentially hazardous substances and amending the law providing for control over the presence of a hazardous substance above its controlled quantity.

The Radioactive Substances Act 1993

17. The Radioactive Substances Act 1993 regulates the keeping and use of radioactive material and makes provision for the disposal and accumulation of radioactive waste. The Act consolidated, corrected and made minor improvements to previous Acts relating to radioactive substances.

The Environment Act 1995

18. The Environment Act 1995 established the Scottish Environment Protection Agency (SEPA) and amended environmental legislation, in particular the Control of Pollution Act 1974 and the Environmental Protection Act 1990. The Environment Act 1995 repealed a number of provisions relating to noise and nuisance from the Public Health (Scotland) Act 1897 and the Control of Pollution Act 1974.

19. The Environment Act 1995 also included important provisions relating to contaminated land, abandoned mines and air quality, with particular regard to preparing a National Air Quality Strategy (NAQS). With regard to contaminated land, the Environment Act 1995 provided local authorities with guidance on the identification of contaminated land and gave powers to issue remediation notices, details of which had to be held on a public register. It also enacted in Scotland, the provisions of Part III of the Environmental Protection Act 1990 relating to statutory nuisance.

The Water Environment and Water Services (Scotland) Act 2003

20. The Water Environment and Water Services (Scotland) Act 2003 (WEWS) transposed the European Water Framework Directive (WFD) into Scots Law. It introduces a planning system for the water environment with SEPA as the lead authority working alongside the public, private and voluntary sectors. The Act ensures that all human activities that can have a harmful effect on the water environment can be controlled by establishing a framework for co-ordinated controls on water abstraction and impoundment, engineering works near watercourses, and all forms of pollution to water. It also specifically establishes a system of river basin management to reduce levels of pollution and protect habitats. This will require the preparation of River Basin Management Plans (RBMP). The WEWS Act gave Scottish Water the responsibility for the maintenance of public SUDS, provided that satisfactory design and construction standards are achieved.
21. SEPA will lead in the preparation of a single RBMP divided into 8 sub-basin plans plus a cross border plan for the Solway and Tweed catchments. Development plans will provide a starting point for the first RBMP so that where consistent with the legislative requirements of the WFD they can be accommodated in the policies and measures of the RBMP. Subsequently, the RBMP will inform the preparation of development plans and where appropriate will be a material consideration in the determination of planning applications with successive plans then informing each other. RBMP's will set out a programme of measures to achieve water quality objectives but policies for the development of land will continue to be set out in development plans.

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

22. The Controlled Activities Regulations (CAR) introduced under the WEWS Act provides the main regulatory controls for protecting the water environment from harm and the main regulatory tools to deliver the objectives of the Water Framework and Groundwater Directive. The Regulations introduce proportionate risk based controls to protect the water environment and promote the sustainable use of water. They introduce specific controls for activities affecting rivers, lochs, groundwater, wetlands, estuaries and coastal waters including discharges, abstraction, impoundment, engineering activities in or near watercourses and groundwater recharge. SEPA are responsible for implementing the Regulations.

Scottish Environment Protection Agency (SEPA)

23. SEPA's overall aim is to provide an efficient and integrated environmental protection system for Scotland that will both improve the environment and contribute to the Scottish Ministers' goal of sustainable development. SEPA is responsible for a wide range of strategic and operational environmental matters including:
- controlling discharges to water (surface, tidal and ground water);
 - authorising the abstraction and impoundment of water;
 - authorising river engineering works in or near watercourses;
 - controlling discharges and emissions to land, air and water from PPC Part A installations;
 - controlling emissions to air from PPC Part B installations;
 - minimising waste and promoting energy efficiency at Part A installations;
 - licensing waste management and registration of waste carriers;
 - registering the keeping and use of radioactive substances and the disposal of waste;
 - regulating industry to prevent land being contaminated, licensing remediation works and causing 'special sites' to be remediated;
 - acting as a statutory consultee for Local Air Quality Management; and
 - minimising waste and promoting recycling in conjunction with the Scottish Executive and Local Authorities.

SEPA's General Duties with respect to Pollution Control

24. SEPA's pollution control powers shall be "*exercisable for the purpose of preventing or minimising, or remedying or mitigating the effects of pollution of the environment*" (The Environment Act 1995, Part I section 33(1)). The Pollution Prevention and Control Act 1999 and the Pollution Prevention and Control (Scotland) Regulations 2000 form the basis for much of SEPA's licensing powers for industrial activities.
25. SEPA is also required, for the purpose "*(a) of facilitating the carrying out of its pollution control functions; or (b) of enabling it to form an opinion of the general state of pollution of the environment, to compile information relating to such pollution (whether the information is acquired by SEPA carrying out observations or is obtained in any other way)*" (The Environment Act 1995, Part I section 33(2)).

SEPA's environmental protection powers and functions are under, or by virtue of, the following legislation:

- (a) The Alkali, &c. Works Regulation Act 1906;
- (b) Part I of the Health and Safety at Work etc. Act 1974;
- (c) The Control of Pollution (Amendment) Act 1989;
- (d) Parts I, II and IIA of the Environmental Protection Act 1990;
- (e) Section 19 of the Clean Air Act 1993;
- (f) The Radioactive Substances Act 1993;
- (g) Regulations made by virtue of section 2(2) of the European Communities Act 1972, to the extent that the regulations relate to pollution;
- (h) The Environment Act 1995;
- (i) The Pollution Prevention and Control Act 1999;
- (j) The Pollution Prevention and Control (Scotland) Regulations 2000, as amended;
- (k) The Water Environment and Water Services Act 2003; and
- (l) The Water Environment (Controlled Activities) (Scotland) Regulations 2005.

The Environment Act 1995, Part I section 33(5)

RELATED LEGISLATION

The Habitats Regulations

26. The Conservation (Natural Habitats, &c.) Regulations 1994 (known as the 'Habitats Regulations') which implement the EC Birds Directive Article 4(4) and the EC Habitats Directive Article 6(2) contain specific obligations to take appropriate steps to avoid significant pollution and deterioration of the habitats and in particular important areas designated under these Directives. In addition, the Ramsar Convention requires wetlands to be protected from pollution. Planning Authorities are expected to consider whether development plans or proposals could have a significant effect on a European site and, if necessary, for such plans to undergo an appropriate assessment. Scottish Natural Heritage (SNH) are required to advise planning authorities and other agencies responsible for controlling pollution on whether development plans

or proposals are likely to cause damage to natural habitats and to advise on appropriate measures to protect key sites. Government policy is set out in SOEnD Circular 6/95 Habitats and Birds Directives (updated June 2000). In particular, it draws attention to the Habitats Regulations which places a duty on both Ministers and all relevant public authorities to exercise their functions to secure the requirements of the Habitats Directive in relation to terrestrial sites and the marine environment. Further guidance has been issued in National Planning Policy Guideline 14 – Natural Heritage and PAN 60 – Planning for Natural Heritage on best planning practice. In addition the Nature Conservation (Scotland) Act 2004 places a duty on every public body to further the conservation of biodiversity.

Marine Protection – Food and Environment Protection Act 1985

27. The deposit of substances or articles in the sea or under the sea-bed within the United Kingdom or United Kingdom controlled waters is regulated by licensing under Part II of the Food and Environment Protection Act 1985 (FEPA) (as amended). For the purposes of the Act “sea” includes any area submerged at mean high water spring tides and also includes, so far as the tide flows at mean high water spring tides, an estuary or arm of the sea and the waters of any channel, creek, bay or river. For United Kingdom waters adjacent to Scotland the licensing authority for devolved activities is the Fisheries Research Services (FRS) of the Scottish Executive Environment and Rural Affairs Department (SEERAD). Under the devolution settlement, deposits relating to oil and gas exploration and exploitation, but only in relation to activities outside controlled waters within the meaning of section 30A(1) of the Control of Pollution Act 1974 ie 3 miles from the coastal baseline, are reserved. All deposits falling within the subject matter of Part VI of the Merchant Shipping Act 1995 are also reserved. The Scottish Adjacent Waters Boundaries Order 1999 (SI 1999 No. 1126) defines the waters that are to be treated as internal waters or territorial sea of the United Kingdom adjacent to Scotland. The licensing authority’s powers are limited however for certain classes of operations by a number of exemptions contained in the Deposits in the Sea (Exemptions) Order 1985.
28. The main purposes of Part II of FEPA are the protection of the marine environment, the living resources which it supports and human health and to prevent interference with other legitimate uses of the sea. In determining applications for licences the licensing authority may also have regard to other matters that it considers relevant. The FRS is responsible for regulating the WFD required engineering controls in coastal and transitional waters. The majority of licences issued by FRS are in respect of the deposit of dredged material from harbours, the deposit of waste arising from industrial fish processing activities and the deposit of chemically inert materials in connection with coastal marine construction works, for example, sewage outfall pipes, marinas, harbours, offshore windfarms and foundations for roads, bridges etc. where they extend below mean high water spring tides.

29. All development proposals which extend below the level of mean high water spring tides require to be considered under Part II of FEPA by the licensing authority. Fees are charged for the costs associated with considering applications, undertaking examinations and tests, issuing licences and monitoring the effect of licensed operations. Marine construction works also need to be notified to the Ports and Harbours Branch of the Scottish Executive Enterprise Transport and Lifelong Learning Department who will consider the need for a consent under section 34 of the Coast Protection Act 1949.

Control of Major Accident Hazard Regulations

30. In November 1996 the European Council adopted a new EC Directive on the Control of Major Accident Hazards involving dangerous substances (commonly known as COMAH or Seveso II). This replaced the original Seveso Directive *and, inter alia, clarified and strengthened the existing provisions for environmental protection. Principally, the Directive is aimed at health and safety issues at installations with a major accident potential but it also addresses the environmental protection aspects of major accident hazards and mitigation of the effects on people and the environment. Seveso II has been implemented mainly through the Control of Major Accident Hazard Regulations 1999. Implementation and enforcement of the 1999 Regulations are currently the responsibility of The Health and Safety Executive (HSE). Article 12 of the Seveso II Directive relates to land use planning and was implemented by the Planning (Control of Major Accident Hazards) (Scotland) Regulations 2000, which amended aspects of the Planning system relating to consideration of planning applications, preparation of development plans and hazardous substances consent applications. *(named after an Italian municipality where a chemical works exploded in 1976)
31. Amendments to the Seveso II Directive have now been made and the Control of Major Accident Hazards Regulations 1999 have been amended. As far as the amendment of related planning provisions is concerned, a consultation paper was issued in August 2005. The main changes to the current arrangements are a revised classification and definition of some dangerous substances and preparations, and changes to qualifying quantities that determine whether an establishment falls within the scope of the Directive. The new Planning (Control of Major Accident Hazards) (Scotland) Regulations 2006 should be in place by Autumn 2006.

THE PLANNING FRAMEWORK

32. Planning authorities and environmental protection bodies have different powers and functions which can on occasions overlap. It is however a long established policy that the planning system should not be used to secure objectives that are more properly achieved under other legislation. However, there are also cases where the planning system may be the most appropriate mechanism to provide environmental protection or improvement. This section gives advice on their respective roles. The Annex provides details of ten environmental protection regimes that are administered by a number of bodies.

DEVELOPMENT PLANNING

33. The Planning Bill contains proposals to publish a second National Planning Framework (NPF2) which is intended to be a more powerful instrument than the first NPF for securing delivery of national policies and programmes. Key to this will be early involvement with the main national agencies to ensure coordination with their policies and programmes. The Bill also contains proposals to alter the Development Plan system by replacing Structure and Local Plans with Strategic Development Plans and Local Development Plans in the four largest city regions and a single tier of Local Development Plans across the rest of Scotland. One element of the proposals will be the designation of key agencies for development planning. They are likely to include SNH, SEPA, Local Enterprise Companies and Scottish Water and others may be added to the list. It is the intention that these bodies provide information and expert opinion at an early stage which should provide the opportunity for issues concerning the environment to be addressed by responsible public bodies. Until the Planning Bill receives Assent however, the existing approach is still relevant as outlined below.

Structure Plans

34. The environment has always been a central concern of structure plans. They have to reconcile the requirement for development with the protection of the environment at the strategic level. Their interaction with River Basin Management Plans, strategic waste management, contaminated land and air quality may typically raise strategic issues. For other issues, environmental protection regimes are less likely to have implications for strategic planning. Consultation with the environmental protection bodies will clarify matters. Issues which may give rise to concern in specific instances include:
- where River Basin Management Plans identify serious water quality issues across a large area;
 - where development is proposed in areas subject to drainage consent;
 - where development is proposed in or adjacent to areas of flood risk;

- in areas where existing concentrations of activity such as industrial or petrochemical plants have a significant influence on the nature, scale and location of future development or redevelopment;
- where a location has to be safeguarded for major development which is likely to have significant implications for the environmental protection regimes; and
- when the structure plan strategy is dependent on the re-use or improvement of formerly developed land it will be important to demonstrate in general terms that the environmental protection issues have been considered alongside the planning issues.

Local Plans

35. If a structure plan has identified a general location where there are special environmental protection concerns, these should be set out in the local plan, any implications explained and, as appropriate, the area(s) identified on the proposals map. The most suitable way to do this may be by defining areas within which particular consultation arrangements apply.
36. During local plan preparation it is good practice to work with the environmental protection bodies so that the planning implications of the environmental protection regimes can be taken into account. Local plans may also need to refer to particular environmental protection regimes if they are likely to impose constraints or limitations on development or particular uses of land in a specific area. This may take the form of a policy or the identification of an area where consultation on specified types of planning application is required, for example with SEPA. In some areas the local plan may have to acknowledge that because certain capacity or environmental thresholds have been or are likely to be reached, further development is unlikely to be permitted unless it incorporates measures to address the environmental constraints. Situations of this nature have arisen in some rural areas where the cumulative effect of development has given rise to concern over further discharges to water courses, however, it can also be an issue in some urban areas.

DEVELOPMENT MANAGEMENT

37. The main interaction between the planning system and the environmental protection regimes occurs during the preparation of a development proposal and its consideration through the development management (formerly development control) process. Nevertheless, because planning applications have to be determined in accordance with the development plan, it is vital that the environmental protection bodies contribute fully to the preparation of development plans and do not rely *only* on their role in development management. That emphasis is reinforced in the Planning Bill as explained above. The following paragraphs give advice on a number of issues relevant to development management.

RESPECTIVE ROLES – Planning System and Environmental Protection Regimes

General Principles

38. The policy basis for the relationship between planning authorities and environmental protection bodies and the application of their respective powers is set out in Scottish Planning Policy 1 – The Planning System and is quoted in full at paragraph 2 above. In summary it states that planning decisions should be made on planning grounds in the public interest and should not be used to secure objectives achievable under other legislation or powers. However, the issues controlled under other legislation may be material considerations, for example the impact of a proposal on air or water quality, even though the regulation of emissions or discharges fall to be dealt with under other legislation. Likewise, when SEPA comments on a planning application and is also the environmental regulator, it should assess the land use aspects of the planning application to clarify whether, on the information available at the time, the proposed development is potentially capable of being consented under the licensing regime.
39. A grant of planning permission can be said to “establish the principle of development” but this is only relevant to planning. It carries no weight so far as environmental protection regimes are concerned. The granting of planning consent does not therefore establish anything so far as other licences, permissions or authorisations are concerned, and they have to be determined according to their own requirements. A valid planning consent must be in place, however, before a Waste Management Licence (WML) or PPC permit can be issued. Nevertheless, the aim should be to avoid situations where planning consent cannot be implemented because other environmental controls cannot be satisfied.
40. Planning powers are therefore not an alternative means of controlling matters which are properly the responsibility of the environmental protection regimes. Each means of control should be used as required by its own legislation, but when two or more are relevant to the same project it is imperative that they complement each other. Generally, the planning system has a wider remit in relation to the protection of the environment than any specific regime. This is because it is concerned with the proper use of land and buildings and with the sum total of the effects which a development has on its surroundings and the environment. It also has to take into account a wide range of non-environmental factors and therefore it will not always deliver environmental protection above any other consideration. Hence it is of a different character to the more specific environmental protection regimes.
41. This difference in their roles may be approached by examining the relative abilities of the planning system and the environmental protection regimes to secure environmental objectives. There is no absolute answer to this but the planning system is probably most able to protect aspects of the environment which are expressed in spatial terms, e.g. a conservation area, a residential

area, an SSSI or a National Nature Reserve, where a proposed development could have a demonstrable effect on the area and any occupants. The effect may be quantifiable, qualitative or a matter of perception. e.g. noise or light affecting a nearby residential area. It is probably less suited to protecting the environment when the effect arises from a process rather than from the presence of the development itself and when it has to be quantified in terms of an emission to a general environmental medium, such as for example, a non-material change to the plant design and layout of a Part B process to satisfy a PPC permit. It follows that in considering a proposal for a potentially polluting development the planning system should address the general suitability of the location or site. It may also be appropriate to ask what pollution issues/events should planning seek to control because they are beyond the scope of the environmental protection regimes?" See also paragraphs 51 – 54 below.

42. The research report, *(The Interaction between Land Use Planning and Environmental Regulation-Scottish Executive Social Research 2004-ISBN 0 7559 38135)*, showed that only a very small percentage (0.1%) of the total planning applications across Scotland were also subject to PPC and WML regulation, although these were mostly major applications. A greater percentage (1-2%) will be subject to CAR applications, although they will tend to raise less significant planning issues individually but cumulatively they could raise issues for SEPA in terms of impact on the aquatic environment.
43. There may be circumstances where the environmental protection body is satisfied that their requirements in relation to a proposed development can be met, but the planning authority takes the view that, because of the particular characteristics of an area, the development is unacceptable on environmental grounds and planning permission may have to be refused. In such cases, which are only likely to arise in exceptional circumstances, the planning authority will need to demonstrate the land use planning reasons which have led them to conclude that the proposed development is unacceptable. It is also possible that a proposal which is acceptable on planning grounds may be unacceptable to the environmental protection body.
44. Questions often arise over whether planning permission and licences or authorisations should be sought simultaneously or sequentially. In theory, there may be time and cost savings in having them processed at the same time, so far as possible, even if the formal approvals or authorisations have to be granted in sequence. This approach may help to minimise the complications and delays which can occur where amendments or alterations to a proposal under one regime may carry significant implications for another. It is recognised however that many developers prefer to obtain planning permission before incurring the expense of working up the details of a scheme which are required under a specific environmental protection regime. Regardless of how respective applications are considered, what is essential, is that adequate information is provided so that all the relevant regulators are consulted and can make informed recommendations at the planning application stage.

Pre-application Discussions

45. In the case of larger or more complex developments it will be helpful for developers to discuss their proposal with the planning and environmental protection bodies in advance of applications being submitted. It is proposed in the Bill that statutory pre-application consultation with the local community will be introduced for certain types of major development and such consultation will be encouraged for other development. Additionally, the pre-application negotiations between applicants, planning authorities and environmental protection bodies will be encouraged and should provide an opportunity to consider the development in principle and to influence its design so that potential problems are resolved or reduced. In those discussions, the planning authority should make clear what information they will require in order to reach a decision. Some of that information may be available through the environmental protection body, for example, where the application of 'best available techniques' (BAT) will require approval of the design, construction and layout of buildings. Any conditions that are likely to be imposed under pollution controls, such as minimum chimney height, can then be taken into account in the planning application. The planning authority may in this way be able to avoid or minimise discrepancies between the requirements of environmental protection regimes and the planning system.

Consultations, Representations and Objections

46. There is a statutory requirement to consult a number of bodies, including SEPA, on specific types of planning applications as set out in Article 15(1) of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 (as amended). Other applications can also raise pollution control issues on which specialist advice is required, for example, developments within a certain distance of the site boundary of a process which is subject to PPC or other authorisation. SNH is also a statutory consultee (see paragraph 26).
47. Planning authorities may therefore wish to identify in discussion with the environmental protection bodies, those types of planning applications in which they might have an interest and would want to be consulted. These arrangements may well vary according to the type of development and the nature of the area but the objective would be to put in place effective working relationships and keep them under review. When a planning authority is consulting it will help the consultee if the issues on which advice is required are identified as precisely as possible. Efficient consultation procedures ought to help reduce the risk of delays that may place unnecessary costs on a developer. One means of improving this exchange would be for applicants to be required to identify on their application forms any other consents that have been obtained or will be required to fully implement the development, to ensure that the relevant regulators are consulted at the planning stage. Similarly local authorities should always respond to SEPA when they are consulted on PPC applications, and include in their response any relevant planning consultations and permissions.

48. Representations or objections by environmental protection bodies should be made on planning grounds and should not seek to duplicate specific environmental protection controls. They should be mindful that they are indicating whether they object to a grant of planning permission or whether conditions should be attached to an approval, on the basis of the information held at the time. These bodies are **not** commenting in their role under other environmental protection legislation. They should make it clear that their comments on a planning application are without prejudice to their regulatory function(s). Hence it is possible for environmental protection bodies not to object to a planning application because the proposal is generally acceptable but refuse the more specific authorisation because the more stringent controls cannot be satisfied. Equally they could object to a planning application on land use grounds while still being able to approve the proposal under environmental protection legislation. The planning system role is to provide a general level of environmental protection though it may be more specific where the issue(s) have a spatial character such as in a designated area. While considerable importance is attached to the efficient and timely operation of the development management process, public health and safety remain overriding concerns.

Material Considerations

49. All determinations of planning applications must be made in accordance with the development plan unless material considerations indicate otherwise (Town and Country Planning (Scotland) Act 1997, section 25). In practice, the scope of material considerations is fairly wide and falls to be determined in the circumstances of individual cases. Any consideration of the quality of land, air or water and potential impacts arising from development, possibly leading to a proven impact on health, is capable of being a material consideration, insofar as it may arise from any land use. Where however a proposal requires licencing under the Pollution Prevention and Control Regulations planning authorities should accept that as adequate and suitable for public health protection (see PAN 63 paragraph 85). SPP1- *The Planning System* lists the considerations which will usually fall to be regarded as material, and considered alongside the provisions of the plan. Whether authorisation or licensing under another regime would be approved or refused is not a material consideration although whether a proposal was 'capable of being licensed' would be. Provision of adequate drainage should be a material consideration in cases where SEPA would not grant a consent to discharge drainage from a housing proposal to a watercourse and no other means of drainage is available.
50. In the specific context of planning proposals which raise environmental protection issues, the following considerations might also be regarded as material by the planning authority, as appropriate:
- the sensitivity of the area, in particular as reflected in landscape, agricultural land and soil quality, nature conservation or archaeological designations, if

evidence suggests that there is a risk of such features being affected by pollution;

- the positioning of buildings and plant on the site and the visual impact of the development, including for example, the impact on the road network;
- the hours of operation required by the development where these may have an impact on neighbouring land use;
- the possibility that the release of smoke, fumes, gases, dust, steam, smell or noise might result in nuisance or loss of amenity, taking into account the possibility that the pollution control equipment might have to compensate automatically and safely in the event of it failing;
- the effect of a cumulative impact arising from several similar applications in a relatively confined area, e.g. provision of several floodlit pitches close to residential areas; and
- the RBMP and the environmental objectives for water included therein.

51. There may be other considerations which are material to a land use planning decision but which may, nevertheless, be best addressed by the relevant environmental protection regime. For example, these may include:
- the potential impact of any discharge of effluent or leachates which may pose a threat to water resources or adjacent land;
 - storage of hazardous materials and waste on site – Hazardous Substances are controlled by the Hazardous Substances Consent (HSC) procedure (see paragraphs 66-68);
 - the water flow regimes within a watercourse arising as a result of proposed development;
 - ensuring the free passage of migratory fish; and
 - the physical modification of the form and structure of the banks and bed of a stretch of watercourse.
52. It follows that when a planning authority receives representations or objections on matters which are more properly dealt with under an environmental protection regime and which do not have land use planning implications, it is unlikely that they will need to attach any weight to them. The planning authority may, however, decide to pass a copy of any representations which concern environmental protection control to the relevant body(s). There remains the possibility that despite the above, nuisance effects on neighbours arising from such proposals, may still raise planning issues. Similarly, any requirements for changes to licensing to further mitigate environmental impacts of established development may require amendments to the existing planning consent.

Use of Conditions

53. Planning authorities have wide powers to impose conditions when granting planning permission and these are explained in SODD Circular 4/1998: The Use of Conditions in Planning Applications. As well as setting out 6 tests for assessing the validity of conditions, the Circular goes on to indicate that where there are matters which are subject to control under separate legislation a condition which duplicates the effects of other controls will be unnecessary. Even where a condition does not precisely duplicate or conflict with another control, differences in requirements can cause confusion and it is best to avoid attempting to solve problems by the use of planning conditions where more specific controls exist. In the exercise of their own responsibilities, planning authorities can assume that environmental pollution bodies will exercise their responsibilities effectively. It is unlikely therefore, that a planning condition which merely duplicated other controls could be justified on the grounds that the planning authority assumed that the other controls would not be exercised effectively.
54. A planning authority may however decide that a condition is needed to control a matter, even though it is also regulated by an environmental protection regime, because the considerations which are material to decision making under the two systems are substantially different. This is because pollution controls may not be exercised in the manner or to the degree needed to secure planning objectives. Conditions relating to the hours of operation of a plant or installation which are intended to protect residential amenity might come into this category, but it is very unlikely that conditions would be appropriate as a means to seek to control the level of emissions from a proposed development which was also subject to pollution control.
55. The process of consultation with the relevant environmental protection authority will help to ensure that conditions are based on valid information and do not duplicate or conflict with conditions that are more appropriately imposed through the relevant pollution control authorisation or licence. Statutory nuisance is not a prior approval regime and it would therefore be acceptable to use planning conditions to secure the aims of the environmental regulatory system in such cases as appropriate.

Enforcement

56. A planning authority's responsibility for the control of development does not end with the grant of planning permission. It is important to ensure that development is carried out with the benefit of planning permission and according to the terms and conditions of that planning permission. Failure to do so can have serious consequences for amenity and the environment. Local authorities should always seek to take enforcement action against breaches where serious environmental harm is likely. This is an issue of particular concern to Scottish Ministers. Effective enforcement of planning controls is

essential to ensure both that developers comply with planning legislation and to maintain public trust and confidence that the planning system operates to protect amenity and the environment. The White Paper: *Modernising the Planning System* set out a range of measures intended to improve delivery of planning enforcement. These have been refined in the Planning Bill. In particular the Temporary Stop Notice should enable planning authorities to stop immediately any unauthorised activity or development where they believe there is a threat to the environment or amenity. Additionally for developments with permission the Start Notice provisions are intended to encourage planning authorities to be more pro-active in monitoring and controlling developments where there are significant environmental concerns.

57. Consultation with environmental protection bodies on specific applications for planning permission can also be used to clarify the respective roles in relation to monitoring the operation of development and identifying responsibilities for taking action should there be a breach of planning control. A clear definition of responsibility is particularly important where breaches of control could have adverse implications for public health and safety. Again, the general principle is that planning authorities should not seek to take action under planning legislation where specific processes and duties are placed on other bodies. There are, however, likely to be circumstances where the environmental protection body will be required to carry out measurements or give technical evidence in respect of an enforcement notice being served under planning legislation to secure land use planning objectives.

Strategic Environmental Assessment

58. The Environmental Assessment (Scotland) Act 2005 requires public sector strategies, plans and programmes to be subject to strategic environmental assessment (SEA). This is a systematic, iterative process for assessing the likely significant effects on the environment of implementing a plan, programme or strategy and taking those effects into account during the plan's preparation. The environmental effects may include effects on any aspect of the environment though in the context of this PAN the most relevant may be biodiversity, human health, fauna, flora, soil, water and air. In a plan led system SEA has a very important role in environmental protection. A research report by David Tyldesley Associates published in 2003 gives advice on the SEA of development plans (Environmental Assessment of Development Plans SEDD 2003.) Guidance is also available through SEDD Circular 2/2004 Strategic Environmental Assessment for Development Planning.

Environmental Impact Assessment

59. The Environmental Impact Assessment (Scotland) Regulations 1999 require the submission of an environmental statement with the planning application for certain types of development. These Regulations are explained more fully in SEDD Circular 15/1999 and PAN 58. Consultation with environmental

protection control authorities is an important aspect of identifying potential effects and suitable mitigation measures. It is good practice to use the Environmental Statement to provide all the technical information required for all permissions and licences, not just planning permission (see also PAN 63 – Waste Management Planning).

60. EIAs should identify those pollutants which are likely to be of concern given the characteristics of the development and its proposed location. It will also help the developer to identify those pollutants that do not require monitoring or prediction. SEPA has a duty to provide information to those preparing Environmental Statements, and to advise planning authorities on the content of the Statements.

Further information on environmental assessment is contained in:

- SEDD Circular 15/1999 The Environmental Impact Assessment (Scotland) Regulations 1999.
- Planning Advice Note 58 Environmental Impact Assessment SEDD 1999

Local Air Quality Management

61. The Scottish Executive Local Air Quality Management – Revised Policy Guidance 2003 sets out the relationship between air quality management and planning (see Chapter 7). Local authorities may also wish to refer to the general advice contained in the good practice guide on air quality and land use planning prepared by ARUP Environmental for the Royal Town Planning Institute in 1999, and Development Control: Planning for Air Quality, published by the National Society for Clean Air and Environmental Protection in 2004 and a 2006 update. Where appropriate the planning, transport and air quality functions of local authorities should work together.
62. In Air Quality Management Areas (AQMA) or adjacent to them, air quality is likely to be a material consideration for large scale proposals or if they are to be occupied by sensitive groups such as the elderly or young children or are likely to have cumulative effects. This does not mean that all such applications should be refused even if they are likely to affect local air quality, but it may mean that conditions have to be applied to mitigate adverse effects. Generally, it may be necessary to consider whether a development could lead to the designation of a new AQMA or if granting planning permission could conflict with an Air Quality Action Plan.
63. Planning authorities will wish to consult environmental health officers in appropriate cases. A study of air quality issues may be warranted, particularly for proposals which are likely to have a significant impact on air quality. It may however be an integral part of an environmental impact assessment. Planning authorities may also need to consider the cumulative effect of developments on air quality leading to a gradual deterioration.

Noise and Nuisance

64. This Planning Advice Note summarises the role of Planning in addressing noise, but more detailed advice is given in PAN 56. The Planning system is (with the exception of PPC which controls noise from Part A installations) the only means to address these issues in anticipation, before problems arise. Statutory Nuisance is often only used as a method of last resort and is limited in its scope to abate a nuisance. In addition, grounds for appeal include, in the case of a notice served on a trade or business premises, best practicable means being used to prevent or counteract the effects of the nuisance.
65. Noise and Nuisance may therefore be material considerations, both in terms of proposed developments that are likely to cause noise or nuisance and in terms of proposed sensitive developments which may be affected. This does not mean that all planning applications likely to result in noise or nuisance should be refused but it may mean that conditions have to be applied to mitigate any adverse effects. New noise or nuisance sensitive developments have to be carefully considered in relation to existing noise or nuisance emitting land uses, for example, social housing adjacent to busy roads or railways, or social housing adjacent to an existing noisy industrial use. In the latter example the local authority should seek to avoid situations where noise complaints from the new occupants would result in an abatement notice being served on the pre existing use. Planning authorities will wish to consult environmental health officers in appropriate cases, even where the issues are considered as part of an Environmental Impact Assessment.

Hazardous Substances

66. 'Hazardous Substances Consent' (HSC) is required for the presence of a defined hazardous substance such as chlorine or liquid oxygen, at or above a 'controlled quantity'. The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993 list the 71 hazardous substances concerned, the controlled quantities and sets out the consent procedures. In determining whether to grant consent, planning authorities have to consider the degree of risk to people in the vicinity of a plant which uses or stores a hazardous substance. While HSC is not strictly a means of controlling pollution, it is a way of protecting the environment.
67. HSC procedures are based on, but separate from normal planning procedures, though both are operated by the planning authority. In effect, the potential hazard posed by a new plant is no longer a consideration for planning permission. Accordingly, the exclusion from any use class (under the Use Classes Order) of any use involving a hazardous substance has been removed. The restrictions on permitted development rights (under the General Permitted Development Order) where hazardous substances are involved have also been removed. The effect of these changes is that some development involving use of a controlled quantity of a hazardous substance no longer requires an express grant of planning permission but instead

hazardous substances consent is required for the presence of the substance. Therefore, it is quite possible for a plant to be granted HSC and refused planning permission, for example on the grounds of access, or vice versa.

68. In considering a HSC application the planning authority must have regard to the development plan, current or contemplated use of the site, use of land and planning permission in the vicinity, advice given by the Health and Safety Executive (HSE) and any other material considerations. As set out at paragraph 31 above, a consultation paper was issued in August in respect of revised arrangements arising from amendments to the Seveso II Directive and draft Regulations then entitled "The Planning (Control of Major Accident Hazards) Regulations 2005. The main changes to the current arrangements are a revised classification and definition of some dangerous substances and preparations, and changes to qualifying quantities that determine whether an establishment falls within the scope of the Directive. A new Circular replacing SOEnD circulars 5/93 and 11/93 will accompany the new Regulations in due course.

Further information concerning Hazardous Substance Consent (HSC) is provided by:

- SOEnD Circular 5/93 Planning Controls for Hazardous Substances – The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993.
- SOEnD Circular 11/93 Planning Controls for Hazardous Substances – consequential amendments.
- SOEnD Circular 16/93 Hazardous Substances Consent – A Guide for Industry.
- The draft Planning (Control of Major Accident Hazards) Regulations 2005.

CONCLUSION

69. Planning authorities, the environmental protection bodies and the regimes which protect people and the environment have heavy responsibilities. The regimes reflect not only the complexities of the issues, but also the fact that the environment is not compartmentalised according to neat administrative demarcation lines. To a certain extent, it is inevitable that the protection of the environment will sometimes require more than one regime to be applied. A major task of this PAN has therefore been to acknowledge the complex nature of the environmental protection issues and seek to ensure that arrangements are in place which minimise the risks to public health and to the environment. It is the responsibility of planning authorities and the environmental protection bodies to collaborate in the task of protecting the environment, and to apply controls so that duplication is minimised and overlap is avoided whenever possible.

NOTE

70. Enquiries about the contents of this planning advice note should be addressed to the specific contacts listed on pages 45-49 or Nick Evans (0131-244-7552). Further copies, together with other PANs, NPPGs and a list of current advice and guidelines are available from The Scottish Executive Development Department, Planning Services Division, Room 2-H Victoria Quay, Edinburgh EH6 6QQ (0131 – 244 7538), or from www.scotland.gov.uk/planning.

ANNEX: ENVIRONMENTAL PROTECTION REGIMES

This Annex does not provide a definitive statement of the statutory framework, nor does it offer an authoritative interpretation of the legislation.

INTRODUCTION

1. Planning and environmental protection systems are separate, but complementary. For example, the planning system complements some pollution control policies by regulating the location of development, the control of some operations, and also, what happens after a development or use has ceased to operate. In practice, however, planning and environmental protection regimes have different powers and functions that can on occasions overlap, and it is in everyone's interest to minimise this. This Annex outlines ten environmental protection regimes that are administered by a number of organisations, and through a variety of mechanisms, including licensing and other authorisation procedures. It aims to help planning authorities, developers and the public understand the current range of environmental protection controls.

2. The environmental protection regimes included in this Annex are:

	Paragraph
• Pollution Prevention and Control	1.1
• Protection of Water Environment (Controlled Activities)	2.1
• Drinking Water Quality – public and private water supplies	3.1
• Contaminated Land	4.1
• Radioactive Substances	5.1
• Statutory Nuisance including Noise	6.1
• Litter	7.1
• Light	8.1
• Air Quality	9.1
• Environmental Noise	10.1

Waste management licensing is addressed in National Planning Policy Guideline (NPPG)10 *Planning and Waste Management (under review)* and *PAN 63* which provides advice on the relationship with the planning system in paragraphs 10 – 12.). Emissions from landfill sites and incinerators are subject to licencing under PPC (see below). For controls administered by Scottish Natural Heritage (SNH) and the Health and Safety Executive (HSE) reference should be made to the main text.

3. The Annex has been designed so the environmental protection regimes have the same presentational format. The description of each regime is structured

so that, where applicable, it begins with an introduction, followed by the main regulator(s), legislation, types of monitoring and fees, charges and registers. Exceptions have been made where more specific details are required. Public rights of access to environmental information are laid out in the Environmental Information Regulations 1992.

POLLUTION PREVENTION AND CONTROL (PPC)

Introduction

- 1.1 The Pollution Prevention and Control (Scotland) Regulations 2000 (PPC), which implement the Integrated Pollution Prevention and Control EC Directive, are designed to control emissions from industrial installations. The industries regulated under PPC include energy industries, production and processing of metals, mineral industries, chemical industries, waste management, food and drinks manufacture, paper and pulp manufacture, textiles and intensive farming. PPC replaces the IPC and LAPC regimes (under Part I of the Environmental Protection Act 1990) immediately for new and substantially changed installations, and for existing installations between 2001 and 2007.
- 1.2 The main objectives of PPC are:
 - to prevent or reduce emissions to air, water and land from installations;
 - to control emissions principally through setting emission limit values based on an assessment of Best Available Techniques (BAT); and
 - to control the amount of waste produced by an installation, energy efficiency, noise, prevention of accidents and restoration of the site after use.
- 1.3 The underlying principle of PPC is that operators of permitted processes are required to use BAT. The determination of BAT should consider costs and advantages of different solutions to environmental problems, balancing a range of environmental factors across the life of the installation. BAT should consider both the technologies used and the way in which the installation is designed, built, maintained, operated and decommissioned.

Regulator

- 1.4 PPC is implemented and enforced by the Scottish Environment Protection Agency (SEPA). SEPA regulates both Part A installations (activities that involve emissions to air, water and land) and Part B installations (emissions to air only).

Legislation

- 1.5 PPC is implemented by the Pollution Prevention and Control Act 1999. The detailed definitions of the industrial activities subject to the PPC are set out in

Schedule 1 to the PPC Regulations (SSI 2000 No. 323, as amended). Under regulation 6 of these regulations, it is an offence for an operator of an installation or mobile plant carrying out an activity prescribed in Schedule 1 to operate without a permit from SEPA. Anyone considering operating such a process should contact SEPA, who will advise on the procedure for applying for a permit. PPC permits may contain conditions covering the operation of the process, emission limit values and monitoring requirements. An operator is also required to notify SEPA of any proposed substantial change in the operation of an installation.

- 1.6 Regulation 17 of the PPC Regulations allows SEPA to serve a revocation notice on an operator, and under regulation 19 an enforcement notice if SEPA believes an operator has contravened or is likely to contravene any permit condition. Regulation 20 enables SEPA to issue a suspension notice if it believes that the operation of an installation “involves a risk of serious pollution”. Regulation 30 sets out the offences under the regulations, which include operating an installation or mobile plant unless authorised by a permit granted by SEPA; failing to comply with a condition of a permit; failing to notify SEPA of a proposed change in the operation of an installation; failing to comply with the requirements of an enforcement notice or suspension notice; and making a false statement.
- 1.7 Regulation 22 allows operators to appeal to the Scottish Ministers in certain circumstances. These include where there has been a refusal to grant a permit; where an operator disagrees with the permit conditions; and where a revocation, variation, enforcement or suspension notice has been served.

Monitoring

- 1.8 Monitoring to demonstrate compliance with the conditions in a permit may be carried out by a combination of self-monitoring, in which case the conditions will include a requirement to monitor the process, and monitoring by regular inspection visits by SEPA.

Fees, Charges and Registers

- 1.9 Fees and charges are due to SEPA when an initial application for a permit is made to SEPA, and on an annual basis. SEPA’s PPC charging scheme is detailed on its website (www.sepa.org.uk).
- 1.10 Details of PPC permits are available for public inspection on registers maintained by SEPA. This includes details of the process, the results of routine monitoring and any comments made by statutory consultees. Information can be excluded from public registers on the grounds of commercial confidentiality and national security.

PROTECTION OF THE WATER ENVIRONMENT (CONTROLLED ACTIVITIES)

Introduction

- 2.1 A new wider system of control to protect the water environment from harm came into effect on April 1 2006 under The Water Environment (Controlled Activities) (Scotland) Regulations 2005 (CAR). Controlled activities include all discharges of matter to the water environment, abstractions of water, impoundments of water and river engineering activities. The water environment includes all *surface waters* (e.g. rivers and lochs), *transitional waters* (e.g. estuaries), *coastal waters* (up to 3 miles out), *groundwaters* and *wetlands*.
- 2.2 Previous water pollution controls under COPA 1974 and the groundwater regulations have been replaced by CAR. Controls on diffuse pollution are expected to be made during 2006/07.
- 2.3 The Regulator for the protection of the water environment is SEPA. It is responsible for ensuring that all controlled activities are authorised under CAR or hold a relevant authorisation.
- 2.4 All authorisations must ensure adequate protection of the water environment and meet the objectives of the Water Framework Directive, the Water Environment and Water Services Act and the relevant River Basin Management Plan.

Legislation

- 2.5 The protection of the water environment is governed by several pieces of European and domestic legislation. The principal controls are covered within The Water Environment (Controlled Activities) (Scotland) Regulations 2005, also known as The Controlled Activities Regulations or CAR.
- 2.6 The Controlled Activities Regulations:
- introduce a system of proportionate risk based controls for controlled activities to protect the water environment from harm and to promote the sustainable use of water;
 - introduce a requirement for all controlled activities to be authorised by virtue of either a general binding rule (as defined within CAR), a registration or a licence, unless the activity is regulated by a relevant authorisation such as a permit under the Pollution Prevention and Control Regulations 2000, as amended or a Waste Management Licence;
 - list controlled activities as:
 - discharge of matter liable to cause pollution to groundwater, wetlands, rivers, lochs, estuaries and coastal waters;

- discharge, disposal or tipping onto land of substances listed in the Annex of the Groundwater Directive (80/68/EEC);
 - abstraction of water from groundwater, wetlands, rivers, lochs, estuaries and coastal waters;
 - impoundment of water affecting wetlands, rivers, lochs, estuaries and coastal waters;
 - engineering activities directly affecting rivers, lochs and wetlands; and
 - groundwater recharge;
- enable SEPA to take into account any management agreements that may exist between water users while determining any application for an authorisation;
 - define offences such as:
 - failing to comply with or contravening a general binding rule;
 - failing to comply with or contravening a registration of licence, including any condition imposed;
 - failing to comply with an enforcement notice issued;
 - enable SEPA to serve a works notice requiring the person responsible to take action (including the cessation of that activity) to prevent impact occurring or cease ongoing impact;
 - enable SEPA to carry out works to prevent impact occurring or cease ongoing impact; and
 - allow for Appeals to be made to Scottish Ministers in respect of conditions attached to an authorisation or where SEPA refuses an authorisation.
- 2.7 Any person found guilty of any such offence is liable to imprisonment or a fine of up to £40,000.
- 2.8 In administering and enforcing the Controlled Activities Regulations SEPA **must apply** the requirements of the following legislation:
- The Water Framework Directive;
 - The Groundwater Directive (80/68/EEC);
 - The Water Environment and Water Services Act 2003;
 - The Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003;
 - The Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004; and
 - The Water Environment (Oil Storage) (Scotland) Regulations 2006.

Other Legislation

- 2.9 In administering and enforcing the Controlled Activities Regulations SEPA **must have regard to**, among others, the following pieces of legislation.
- 2.10 *The Bathing Water (Classification) (Scotland) Regulations 1991:*
- enable Scottish Ministers to identify waters where bathing is explicitly authorised or where bathing is not prohibited and is traditionally practised by a large number of bathers; and
 - set quality standards in the form of maximum or minimum values for specific microbiological, physical and chemical characteristics.
- 2.11 SEPA monitors the quality of all identified bathing waters against the mandatory and guideline standards in the Regulations during the defined bathing season from the start of June until the middle of September.
- 2.12 *The Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003 (SSAFO):*
- require persons with control of a crop being made into silage or control of livestock slurry to take precautions to prevent pollution; and
 - set requirements for the standards and capacity of facilities for the storage of silage, effluent, slurry and agricultural fuel oil.
- 2.13 *The Water Environment (Oil Storage) (Scotland) Regulations 2006*
- set design standards for the storage of oil, both in fixed and mobile containers, and;
 - include agricultural fuel oil, previously under the control of SSAFO regulations.
- 2.14 *The Surface Waters (Dangerous Substances) (Classification) (Scotland) Regulations 1990 and 1992:*
- set Environmental Quality Standards (EQS) for the classification of waters where certain List I dangerous substances (likely to be toxic or to bioaccumulate) may be discharged.
- 2.15 SEPA controls discharges containing these substances by setting maximum concentrations to be allowed in individual discharges and monitoring them to ensure the discharges comply.
- 2.16 *The Urban Waste Water Treatment (Scotland) Regulations 1994:*
- require the water authorities to provide, by certain dates, systems for the collection of urban waste water and facilities for its treatment. The required standard of treatment of the waste water is determined by a combination of the size of the pollution load, as defined by the 'population equivalent', and the type and sensitivity of the receiving water; and

- enable Scottish Ministers to designate certain waters as high natural dispersion areas (HNDA's) or sensitive areas, subject to 4-yearly review.
- 2.17 Provision of secondary treatment is the normal standard of treatment. However, discharges which are in a HNDA may be subjected to less stringent treatment provided comprehensive studies indicate that the discharge, which receives at least primary treatment, will not adversely affect the environment. Such studies must be repeated at least every 4 years. SEPA sets consent conditions to suit the level of treatment required and monitors the discharges to verify compliance.
- 2.18 *The Protection of Water Against Agricultural Nitrate Pollution (Scotland) Regulations 1996* and legislation covering the subsequent designations (2002) and action programmes 2003:
- protect waters against pollution caused by nitrates from agricultural activity; and
 - require the Member States (Scottish Ministers) to identify waters polluted by nitrates from agricultural sources and designate the land draining into these waters as Nitrate Vulnerable Zones (NVZs). Farmers in the zones will be required to undertake action plans to reduce nitrate pollution from agriculture.
- 2.19 *The Shellfish Directive 79/923/EEC and Freshwater Fish Directive 78/659/EEC*:
- protect or improve waters to support shellfish and freshwater fish life as salmonid or cyprinid waters. Requires the Member State (Scottish Ministers) to designate such waters and set values for physical, chemical, biological and microbiological parameters.
- 2.20 SEPA monitors the waters and if necessary ensures that a programme to reduce pollution is implemented and that designated waters conform.

Monitoring

- 2.21 Monitoring of the quality of all inland waters (rivers, lochs and groundwaters), estuaries and coastal waters is carried out by SEPA. Monitoring of the authorised activities may be carried out by SEPA or by the operator depending on the type and scale of the activity. It is likely that post WFD, other parties will also become involved in monitoring to assess the water environment due to the wider range of parameters to be assessed and the wider spread of expertise and experience required to do so.

Fees, Charges and Registers

- 2.22 Fees and charges are due to SEPA when an initial application for an authorisation is made and in certain cases on an annual basis. SEPA's Water Environment (Controlled Activities) fees and charges
- scheme is detailed on its website (www.sepa.org.uk). For those aquatic discharges licensed under IPC and PPC, fees and charges are due to SEPA, as described for IPC/ PPC in paragraph 1.9 above.
- 2.23 Details of authorisations are available for public inspection on registers maintained by SEPA including:
- details of any application made to SEPA;
 - any notices served during determination of the application;
 - details of any advertisement placed during determination of an application;
 - any comments made by statutory consultees;
 - details of all authorisations granted, deemed to be granted or imposed by SEPA;
 - details of any enforcement notices served;
 - results of routine monitoring; and
 - details of convictions for offences under CAR
 - Information can be excluded from public registers on the grounds of commercial confidentiality and national security.
- 2.24 Where Scottish Ministers have designated certain areas for specific pollution control purposes for example; nitrate vulnerable zones (NVZs); sensitive and high natural dispersion areas (HNDAs), maps of these designated areas must be available for public inspection (normally at SEPA offices).

DRINKING WATER QUALITY

Introduction

- 3.1 Current UK Drinking Water quality requirements stem from the EC Drinking Water Directive of 3 November 1998 (98/83/EC) relating to the quality of water intended for human consumption.

PUBLIC WATER SUPPLIES

Regulator

- 3.2 The regulator for the quality of public drinking water supplies is the Drinking Water Quality Regulator for Scotland appointed under Section 7 of the Water Industry (Scotland) Act 2002. Scottish Water must supply wholesome water for domestic purposes. It is a criminal offence to supply water unfit for human consumption. Local authorities must take appropriate steps to keep themselves informed about the wholesomeness of public water supplies in their area and notify Scottish Water if not satisfied. The Drinking Water Quality Regulator must take enforcement action against Scottish Water if it fails in its duty to supply wholesome water unless the failure is trivial or Scottish Water is complying with a legally binding undertaking to remedy the matter.

Legislation

- 3.3 The Water Supply (Water Quality) (Scotland) Regulations 2001:
- define wholesomeness by setting standards, prescribed concentrations or values for chemical and microbiological parameters;
 - set, and define, the supply zone as the basic unit for quality monitoring;
 - require Scottish Water to monitor the quality of their supplies;
 - specify detailed sampling requirements for samples taken at taps within supply zones, at service reservoirs and at water treatment works;
 - make provision whereby, taking account of public health risks, Scottish Ministers may authorise a temporary departure from the standards where the water is not of the required quality; and
 - require Scottish Water to publish an annual report and keep a public register of water quality.

Other legislation

- 3.4 The Surface Waters (Abstraction for Drinking Water) (Classification) (Scotland) Regulations 1996:
- prescribe a system for classifying the quality of inland waters according to their suitability for abstraction for supply as drinking water, in implementation of Directive 75/440/EEC (quality required of surface water intended for the abstraction of drinking water);

- provide mandatory values for classifications DW1, DW2 and DW3 in Schedule 1 and guideline values in Schedule 2; and
- incorporate the methods of measurement and frequency of sampling and analysis for those values, laid down in Directive 79/869/EEC (methods of measurement and frequencies of sampling and analysis of surface water intended for the abstraction of drinking water).

Monitoring

- 3.5 The administration of the Drinking Water Quality Regulations is carried out by the Drinking Water Quality Division of the Scottish Executive. The Division carries out a range of functions on behalf of the Scottish Ministers.

PRIVATE WATER SUPPLIES

Regulator

- 3.6 The regulator for the water quality of private water supplies is the local authority in whose area the supply is located. Local authorities must take appropriate steps to keep themselves informed about the wholesomeness of private water supplies in their area.

Legislation

- 3.7 The Private Water Supplies (Scotland) Regulations 1992:
- define wholesomeness in the same manner and prescribe the same standards as for public supplies;
 - require local authorities to classify private supplies according to size and use; and
 - require local authorities to monitor private supplies in their area according to classification.

The Scottish Executive plans to bring strengthened Regulations into force at the end of 2005 to implement the EC Drinking Water Directive in respect of private water supplies.

- 3.8 The Water (Scotland) Act 1980 requires local authorities to secure improvements to private supplies if they consider them necessary.

Monitoring

- 3.9 The Drinking Water Quality Regulator checks that Local Authorities are complying with the requirements of the 1992 Regulations including:
- classification of private water supplies into one of 11 classes according to size, nature and use of the supply and the annual review of the classification;
 - the collection and provision of information;

- the sampling of supplies in accordance with their class; and
- the analytical arrangements including analytical quality control.

PUBLIC AND PRIVATE WATER SUPPLIES

Groundwater Protection

3.10 Groundwater is an important resource which is susceptible to the effects of contamination that could result from the failure to prevent or control the release of leachate from landfill sites, other point sources or contaminated land, etc. Activities liable to cause pollution of groundwater will be mainly regulated via the Controlled Activities Regulations 2005. SEPA have produced a Groundwater Protection Policy which aims to provide a sustainable future for Scotland's groundwater resources by protecting legitimate uses of groundwater and providing a common SEPA framework to:

- protect groundwater quality by minimising the risks posed by point and diffuse sources of pollution; and
- maintain the groundwater resource by influencing the design of abstractions and developments, which could affect groundwater quality.

The policy is available from SEPA's website: www.sepa.org.uk/groundwater

Fees, Charges and Registers

3.11 Under the private water supply regulations, a local authority may charge for sampling and analysis of a private water supply.

3.12 Associated guidance to the 1992 Regulations given in SOEnD Circular 20/1992 The Private Water Supplies (Scotland) Regulations 1992: Guidance to Local Authorities, recommends that local authorities maintain public registers of information about private water supplies in their area, and asks local authorities to supply information they hold about private water to the Department.

CONTAMINATED LAND

Introduction

4.1 Environmental pollution arising from contaminated land was in the past dealt with either by actions carried out in common law, in relation to nuisance or negligence (duty of care) or under statute law through the Control of Pollution Act 1974, the Environmental Protection Act 1990 and the Public Health (Scotland) Act 1897. The Environment Act 1995 repealed the statutory nuisance provisions of the 1897 Act and replaced them by extending Part III of the Environmental Protection Act 1990 to Scotland.

- 4.2 The Environment Act 1995, through section 57, introduced a risk-based definition of contaminated land, the establishment of which requires connectivity between a source, a pathway and a target, and also involves:
- a test for significant harm (i.e. harm to human health, protected habitats and property); and
 - a test for pollution of controlled waters.
- 4.3 The Environment Act 1995 also applies the 'polluter pays' and 'suitable for use' principles.
- Polluter Pays Principle – this is intended to allocate responsibility for the cost of remediation of contaminated land among the 'polluters' (having caused or knowingly permitted contamination), landowners and taxpayers.
 - Suitable for Use Principle – this requires remediation action only to prevent or remedy significant harm or pollution of the water environment, where this would be proportionate, taking into account the level of risk, cost of remedial action and availability of means to deal with the problem.. If land or buildings are to be developed, including a change of use, the issue of contamination may continue to be a material consideration to be addressed through the planning system.

Regulators

- 4.4 The primary regulatory role under the contaminated land regime rests with the local authorities. The local authorities are required to:
- cause their areas to be inspected from time to time in order to identify contaminated land;
 - designate land as 'contaminated land' and where appropriate as, 'special sites';
 - consult on what remediation might be required in each case;
 - require remediation to take place (through service of formal Remediation Notice if necessary);
 - record information about remediation carried out under the regime;
 - identify 'appropriate persons' responsible for remediation; and
 - exclude certain groups and apportion liabilities.
- 4.5 The Scottish Environment Protection Agency (SEPA) has four principal roles under the regime:
- to provide site specific guidance to local authorities on the identification and remediation of contaminated land;
 - to act as regulator for a defined category of 'special sites';

- to compile regular 'national reports' on contaminated land; and
- to sponsor technical research and act as a centre of expertise.

Legislation

- 4.6 The contaminated land regime is implemented by section 57 of the Environment Act 1995 which inserted a new Part IIA into the Environmental Protection Act 1990.
- 4.7 In the Environmental Protection Act 1990, as amended, Section 78B places a duty on the local authority to cause its area to be inspected from time to time to identify contaminated land/special sites. Section 78E outlines the procedures for serving a remediation notice whilst the information to be recorded on public registers is outlined in Section 78R.
- 4.8 The Act sets out the principles but the required process of risk assessment means that it is simply not possible to prescribe details of the regulatory requirements which might be appropriate in all possible circumstances. They can be determined only in the light of detailed professional, technical judgements. Scottish Executive (ERAD) Circular 1/2000 sets out a summary of policy and provides statutory guidance on:
- the definition of contaminated land;
 - the identification of contaminated land;
 - remediation of contaminated land requirements;
 - exclusion from and apportionment of liability for remediation; and
 - the recovery of costs of remediation.
- 4.9 The Contaminated Land (Scotland) Regulations 2000 cover detailed matters such as the definition of 'special sites', grounds for appeal against remediation notices, and compensation for providing access to land.
- 4.10 The Water Environment (Controlled Activities) (Scotland) Regulations 2005 control discharges (from non-prescribed processes) to the water environment (rivers, groundwaters, estuaries etc.) and therefore also have a part to play in relation to pollution of the water environment by contaminated land.

Monitoring

- 4.11 A Risk Assessment, which usually includes site investigations involving soil and water sampling plus analyses to model and quantify risks to specified receptors, is normally required in order to identify contaminated land under Part 11A. PAN 33-Development of Contaminated Land explains the link to an equivalent approach between Part 11A requirements and the contaminated land risk assessments required to be submitted as part of planning applications. Verification monitoring and assessments are also typically

required after remediation has been carried out, depending on the remediation techniques used, to confirm that remediation requirements have been achieved.

- 4.12 In the past, site contamination was typically assessed against chemical trigger levels published in the Inter-Departmental Committee on the Redevelopment of Contaminated Land, Guidance Note 59/83. This has been withdrawn and replaced with new updated guideline values obtained from recent research work. The CLEA package comprising Contaminated Land Reports, CLEA Software 2002 and Soil Guideline Values is considered to be the key instrument for technical assessment of health risks from contaminated land. Further reports have been issued and further research is ongoing. However, the CLEA package does not consider the risk to the water environment from contaminated land. Separate assessment of these risks is needed.
- 4.13 Monitoring of surface and groundwater parameters is a useful method of remote monitoring in relation to contamination effects both before and after remediation, as is air quality monitoring. Some of this information may be available from SEPA's duties regarding air and surface water and quality monitoring under the Environmental Protection Act 1990, as amended by the Environment Act 1995, section 33 (2).

Fees, Charges and Registers

- 4.14 Details of a cost recovery scheme whereby the enforcing authority can recover costs of remediation works is contained in Circular 1/2000 Statutory Guidance.
- 4.15 The requirement of public remediation registers is set out in Section 78R of the Environment Act 1995. The Remediation Registers are to include (amongst others) particulars of:
- remediation notices served by the enforcing authority, details of these and upon whom they have been served;
 - appeals against such remediation notices;
 - remediation statements or remediation declarations;
 - notifications of claimed remediation;
 - designation (or termination) of any land as a special site; and
 - convictions for not complying with a remediation notice or other offences under section 78M as may be prescribed.
- 4.16 The following shall be excluded from the Remediation Registers:
- information affecting national security (section 78S); and
 - certain confidential information (Section 78T).

RADIOACTIVE SUBSTANCES

Introduction

- 5.1 Responsibility for radioactive waste management is shared between the Government, regulators and the producers of the waste itself. The Government decides on matters of overall policy; the regulators ensure that the policy is implemented; and the producers of waste must manage it in ways which meet the regulatory requirements. In accordance with the 'polluter pays' principle and accounting
- standards, waste producers must also ensure that adequate financial provision is made to cover existing and future liabilities.
- 5.2 The Government's policies are set out in its *Review of Radioactive Waste Management Policy* 1995 (Cm 2919), which revised and updated policies to emphasise the respective roles of Government, regulators and producers and owners of waste and to apply the concept of sustainable development and its supporting principles.

Regulators

- 5.3 There are two authorities that regulate the use of radioactive substances in Scotland:
- SEPA regulates the keeping and use of radioactive material registered under the Radioactive Substances Act 1993 for that purpose and for the accumulation and disposal of radioactive wastes by persons authorised under that Act;
 - The Health and Safety Executive (HSE) enforces the Health and Safety at Work etc. Act 1974, the Ionising Radiations Regulations 1999 made under that Act and the Nuclear Installations Act 1965. The 1965 Act is enforced by Her Majesty's Nuclear Installations Inspectorate (HMNI), an arm of HSE, which acts, in Scotland, on behalf of Scottish Ministers.

Legislation

- 5.4 There are three main pieces of UK legislation governing the way in which radioactive substances are controlled and disposed.
- The Nuclear Installations Act 1965 established a licensing regime regulating activities on nuclear sites to ensure the safety of both workers and members of the public in respect of hazards peculiar to the nuclear industry other than from routine discharges to the environment.
 - The Ionising Radiations Regulations 1999 establishes a framework for ensuring that exposure to ionising radiation arising from work activities, whether from man-made or natural radiation and from external or internal

radiation, is kept as low as reasonably practicable and does not exceed dose limits specified for individuals.

- The Radioactive Substances Act 1993 regulates the keeping and use of radioactive materials and authorises the accumulation and disposal of radioactive waste.

- 5.5 Under the 1993 Act an authorisation may be issued with limitations and conditions designed to meet all relevant national and internationally accepted standards. In general, all authorisations impose quantitative limits on total amounts of radioactivity to be discharged, and most contain limits on specified radioactive materials. In the case of authorisations for the disposal of radioactive wastes from nuclear sites, operators are generally required to use the best practicable means to reduce the volume and activity in all the waste discharged. It is open to the person directly concerned to appeal to Scottish Ministers against SEPA's decision in certain circumstances, including refusal of an application, limitations or conditions attached to an authorisation, or revocation of an authorisation.

Monitoring

- 5.6 Radioactive discharges from nuclear sites and their effect on the environment are monitored by the nuclear industry under the terms of their disposal authorisations and backed up by independent monitoring by the regulatory bodies. SEPA has the authority to visit premises and take action, including initiation of legal proceedings through the Procurator Fiscal. One guiding principle in authorising discharges from a particular site is the need to restrict the resulting radiation doses that might be
- received by the "critical group", since adequate protection of this group will ensure that others are also protected.
- 5.7 The UK is required to establish the facilities necessary to carry out continuous monitoring of radioactivity levels in the air, water and soil to ensure that it complies with the basic standards of the Euratom Treaty.

Fees, Charges and Registers

- 5.8 Fees and charges are due to SEPA when an initial application for authorisation is made, and on an annual basis.
- 5.9 Section 39 of the Radioactive Substances Act 1993 places a requirement on SEPA to allow public access to a wide range of documents in its possession but there is no requirement for SEPA to keep a 'register'. SEPA have recently been directed to restrict certain information in relation to registrations under the Radioactive Substances Act 1993.

STATUTORY NUISANCE INCLUDING NOISE AND ODOUR

Introduction

- 6.1 Statutory nuisance was first introduced into legislation as a response to the epidemics caused by the poor sanitation and unsatisfactory housing conditions which existed in the large urban areas in the last century. Unhygienic living accommodation, lack of proper sanitation and clean water, food storage/preparation and the inappropriate medical treatment of illness contributed to the widespread incidence of disease. It was not until the realisation that diseases were transmitted by these circumstances, that governments began to legislate for improvement.
- 6.2 A statutory nuisance, including noise, is defined by the Environmental Protection Act 1990 Part III section 79 (1) (as amended) as:
- any premises in such a state as to be prejudicial to health or a nuisance;
 - smoke emitted from premises so as to be prejudicial to health or a nuisance;
 - fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
 - any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
 - any accumulation or deposit which is prejudicial to health or a nuisance;
 - any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
 - noise emitted from premises so as to be prejudicial to health or a nuisance;
 - noise that is prejudicial to health or a nuisance and is emitted from a vehicle, machinery or equipment in a street, or in Scotland, road; and
 - any other matter declared by any enactment to be a statutory nuisance.

Regulators

- 6.3 The main regulators are the local authorities, but in the case of some noise legislation, the police also have powers.

Legislation

- 6.4 Part III of the Environmental Protection Act 1990 is the primary piece of legislation dealing with noise and nuisance in Scotland. It is administered by local authorities and only applies in relation to premises not covered by IPC and LAPC authorisations under Part I of the Environmental Protection Act 1990 or PPC installations. Under section 80 of the Act, where a local

authority is satisfied that a statutory nuisance exists or is likely to occur or recur, it shall serve an abatement notice. The person served with the notice may appeal against the notice to the sheriff within 21 days of the notice being served.

- 6.5 The earlier relevant provisions in the Public Health (Scotland) Act 1897, and in sections 58 and 59 of the Control of Pollution Act 1974 were repealed by the Environment Act 1995. Other sections of the 1974 Act relating to advertising, the playing of loud speakers, noise from construction sites etc., remain in force. These are also administered by local authorities.
- 6.6 Additionally, section 54 of the Civic Government (Scotland) Act 1982 allows the police to take action against the playing of 'sound producing devices'. This includes powers to confiscate such equipment as evidence in court proceedings. The Criminal Justice and Public Order Act 1994 also contains powers which allow the police to seize sound equipment. The police also have wide-ranging powers to deal with noise under the common law offence of a breach of the peace, and this is also used in such circumstances.
- 6.7 New complementary legislation to tackle noise from domestic premises was implemented on 21 February 2005 under the Antisocial Behaviour etc (Scotland) Act 2004. This provides local authorities with flexible and enabling powers to establish noise services within their area for up to 24 hours a day seven days a week, on the basis of breaching set objective noise levels. If a local authority officer determines the offending noise is antisocial and it measures above the set level they will issue a Warning Notice to abate the noise within 10 minutes. If this is ignored the officer can issue a Fixed Penalty Notice of a £100 fine, which is required to be paid within 28 days. If no payment made the case can be referred for prosecution and a £1000 fine on conviction. The Act also gave equipment seizure powers to local authority officers.

Monitoring

- 6.8 Section 79 of the Environmental Protection Act 1990, imposes a duty on local authorities to inspect their area from time to time to detect statutory nuisances which ought to be dealt with under section 80 of the same Act. They also have a duty to make reasonable steps to investigate complaints of statutory nuisance made to them by a person living within their area.

Fees, Charges and Registers

- 6.9 There is no system of fees and charges for this regime. Scottish councils keep statistics on noise complaints under a number of categories, including industrial, commercial, domestic, entertainment and construction sites. These are published on an annual basis by the Royal Environmental Health Institute of Scotland.

Odour

- 6.10 The Scottish Executive introduced new legislation to tackle sewerage nuisance by giving Scottish Ministers powers to issue statutory codes of practice by implementing Sections 25 and 26 of the Water Services etc (Scotland) Act 2005. Sewerage nuisance can refer to odour, discharges, insects or any other thing emanating from the sewerage system. The first code to specifically control odour from waste water treatment works was commenced on 22 April 2006, and also dis-applied Sections 79 to 81 of EPA 1990 relative to sewerage nuisance. The code places a statutory duty of compliance with the code on Scottish Water and its PFI operators at all WWTW in Scotland, except those regulated by SEPA under IPPC control or the Waste Management Licensing regime. The code also places a duty on local authority regulators to monitor compliance. The Guidance on Statutory Code of Practice on Sewerage Nuisance- Assessment and Control from Waste Water Treatment Works-was published on 24 April 2006. It accompanies the Code and includes guidance in Section 10 on planning controls with regard to new plant design. It recommends where WWTW are not subject to IPPC control, the careful use of planning conditions to require inclusion of odour control measures and that establishing operating conditions may be appropriate.
- 6.11 Planners should refer to The Sewerage Nuisance (Code of Practice) states: When developing new and significantly upgraded WWTW, a detailed review of the proposed design shall be undertaken and shall include a justification for the selection of process technology and controls at the planning and design stage. The design shall incorporate adequate odour containment and treatment provisions.
- 6.12 Section 79 of the Environmental Protection Act 1990, imposes a duty on local authorities to inspect their area from time to time to detect statutory nuisances which ought to be dealt with under section 80 of the same Act. They also have a duty to make reasonable steps to investigate complaints of statutory nuisance made to them by a person living within their area. Section 26 of the Water Services etc (Scotland) Act 2005 imposes a duty on local authorities to investigate complaints of odour nuisance from WWTW, and inspect WWTW to ensure compliance with new code of practice.
- 6.13 There is no system of fees and charges for this regime. Scottish Councils keep statistics on nuisance complaints under a number of categories, including industrial, commercial, domestic, entertainment and construction sites. These are published on an annual basis by the Royal Environmental Health Institute of Scotland.

LITTER

Introduction

7.1 The control of litter has been the subject of much legislation, for example, the Control of Pollution Act 1974, the Refuse Disposal (Amenity) Act 1978, the Local Government and Housing (Scotland) Act 1982 and the Litter Act 1983. However, it was Part IV of the Environmental Protection Act 1990 which put an unambiguous duty on local authorities and other owners of land to which the public have access in respect to clearance of litter and refuse. Littering is an offence which may be committed only in respect of relevant land, generally that which is public. Depositing refuse illegally on all types of land constitutes the offence of fly-tipping, which is dealt with by Part II of the Environmental Protection Act 1990.

Regulators

7.2 The control of litter is the responsibility of local authorities who may impose:

- a litter duty on occupiers of other publicly accessible land by designating that land as a Litter Control Area; and
- requirements on the occupiers of certain types of premises in respect of clearance of litter or refuse outside their premises.

Legislation

7.3 Section 89(1) of the 1990 Act places a duty on certain bodies (a duty body) to keep their relevant land clear of litter and refuse so far as is practicable. The duty applies to:

- councils;
- joint boards;
- the Crown;
- designated statutory undertakers (broadly railway operators, road transport undertakings (other than licensed taxi or hire car operators) and canal, harbour, port and airport operators);
- designated educational institutions (broadly universities and publicly funded colleges and schools); and
- the occupiers of land which has been designated a 'Litter Control Area' under the Litter Control Areas Order 1991.

7.4 In most cases, the relevant land of a duty body is publicly accessible land which is open to the air and which is under the direct control of the duty body. However, in certain circumstances railway operators also have a duty in respect of tracks and track side near stations or in urban areas.

- 7.5 In addition to litter duty, section 89(2) creates a duty in respect of most roads to keep them clean so far as practicable. Councils have this duty in respect of roads (other than special roads and motorways) which are maintained at public expense. Scottish Ministers have this duty in respect of special roads and motorways, discharged through the Road Operating Companies.
- 7.6 Duty bodies must have regard to the Code of Practice on Litter and Refuse issued under section 89(1). The Code is currently being revised as a Scotland-only document and it is expected the new version shall be available soon. Duty bodies must also have regard to Directions from the Scottish Ministers as to how to perform the duty of litter clearance, given under s89(6A), as inserted by the Antisocial Behaviour etc (Scotland) Act 2004. Both the Code and any relevant Directions may be cited in any legal proceedings such as those described in paras 7.8 – 7.10 below.
- 7.7 Apart from establishing duties to clear land, section 87 of the 1990 Act establishes an offence which, broadly stated, is that of dropping anything whatsoever in a public place. Section 88 provides councils and police officers with the option of issuing a fixed penalty rather than seeking a prosecution.
- 7.8 Under section 91 of the 1990 Act, an individual can apply to the Sheriff Court for a Litter Abatement Order to require a duty body to ensure the removal of litter by which the individual is aggrieved, provided the Court is satisfied that such an order should be made. The Code of Practice and any Directions from the Scottish Ministers shall be admissible evidence in this respect. The individual must give five days notice of his intention to apply for such an Order.
- 7.9 Under section 92, a council may issue a Litter Abatement Notice on the Crown, designated statutory undertakers, designated educational institutions or occupiers of land subject to a Litter Control Area Notice if their relevant land is defaced by litter or refuse. The Street Litter Control Notice Order 1991 lists the types of premises in respect of which a notice may be issued.
- 7.10 A person who fails without reasonable excuse to comply with a Litter Abatement Notice or Order is guilty of an offence with a maximum penalty of level 4 (£2,500) together with a further fine of one twentieth of that level for each day on which the offence continues after conviction. Appeals against an Order or Notice may be made through the Courts. In any proceedings under this provision the Code of Practice and any Directions from the Scottish Ministers shall be admissible evidence.
- 7.11 The offence of littering carries a maximum level 4 fine (currently £2,500), but councils can operate a fixed penalty scheme. The fixed penalty is currently £50, but may be varied by the Scottish Ministers up to level 2 of the standard scale (currently £500). A council, or a police officer, can report an offender for prosecution for the littering offence if a fixed penalty is not paid within 14 days, but payment within this period removes any liability to prosecution.

Monitoring

- 7.12 The Code of Practice provides a cleanliness standard based on land use and time. It sets out grades of cleanliness and divides land into zones according to use and busyness. Litter clearance, according to standards related to the Codes of Practice, is a statutory performance indicator audited by Audit Scotland.

Fees, Charges and Registers

- 7.13 There is no system of fees and charges under this regime. Section 95 requires councils and joint boards to maintain a public register of all Litter Control Area and Street Litter Control Notices issued by them. The Register must be available for inspection free of charge at all reasonable times.

LIGHT**Introduction**

- 8.1 Light pollution falls into two main categories. Firstly, lighting from roadways, floodlighting of buildings and advertising which illuminates the night sky and causes problems for astronomers; and secondly, lighting (usually domestic), which causes annoyance to people living adjacent to it.
- 8.2 Light pollution is increasingly being recognised as a source of nuisance, especially in the domestic context. Proliferation of exterior security lighting on domestic properties is leading to a small but growing number of complaints being made to the environmental health departments of local authorities throughout Scotland.
- 8.3 A survey of such complaints made to local authority environmental health officers, carried out in April 1995 by The Scottish Office, found that a total of 82 complaints had been made in the calendar year of 1994. Of these, 48 related to domestic security lighting. Most complaints are dealt with informally by environmental health officers. At this time, local authorities do not regard light pollution as a particular problem requiring specific action, but there is a recognition that the incidence of complaints is likely to rise as such installations become more common on domestic property.

Regulators

- 8.4 Local authorities deal with complaints as a general nuisance, but there is no specific legislation available to deal with complaints on a more formal basis.

Legislation

- 8.5 There are no specific legislative controls on light pollution, but the Scottish Executive are considering adding artificial light pollution to the list of Statutory Nuisances under Part III of the Environmental Protection Act in 2007 when a suitable legislative vehicle becomes available. This has been done for England and Wales, commencing April 2006. A new technical advice note is also being issued by Transport Scotland in 2006, identifying the issues that planning authorities, developers, designers, road engineers and other relevant authorities should be aware of in lighting proposals. Lighting on motorways and trunk roads in Scotland is installed to ensure minimum spillage of light upward, and local authorities work largely to the same principles. The installation of domestic scale lighting on existing buildings does not normally amount to development requiring planning permission since it would not materially affect the external appearance of the building. The extension of controls would place new burdens both on planning authorities and on businesses. Stricter controls do apply in conservation areas and for listed buildings. Planning permission is however required for lighting installations which are either free standing or amount to engineering operations.

Monitoring

- 8.6 The Scottish Executive is committed to conducting a further survey in 2006 of the incidence of nuisance caused by obtrusive or badly positioned lighting. Local authorities will be asked to report on the number of complaints made on this subject. Thereafter, further consideration will be given to the need for additional controls in this area

Fees, Charges and Registers

- 8.7 There is no system of fees and charges nor is there a requirement to keep registers.

AIR QUALITY

Introduction

- 9.1 Ambient air quality policy in Scotland is based on both European and domestic legislation.

EU Air Quality Framework Directive

- 9.2 Ambient air quality legislation in Europe derives from the 1996 Air Quality Framework Directive (Directive 96/62/EC), which established an EU-wide framework for addressing air quality issues. Three Daughter Directives set Limit Values for seven air pollutants – benzene, carbon monoxide, lead, nitrogen dioxide, ozone, particles and sulphur dioxide – and dates by which they should be achieved. A proposed fourth Daughter Directive contains

target values for a further five pollutants – arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons (PAHs) – which should be brought down to levels as low as is practicable.

- 9.3 The first three Daughter Directives have been transposed into legislation by the Air Quality Limit Values (Scotland) Regulations 2003 (SSI 2003 no.428) and the Air Quality Limit Values (Scotland) Amendment Regulations 2003 (SSI 2003 no.547).
- 9.4 Overall responsibility for achieving the Limit Values lies with the Scottish Ministers, and ultimately with the UK Government as the EU Member State. However, local authorities play a central role through their duties in working towards the domestic air quality objectives which are similar to, or in some cases more stringent than, the Limit Values (see paragraph 9.2). Other organisations such as SEPA are also involved. The Limit Values are mandatory so the Scottish Ministers and UK Government may be subject to infraction proceedings, should any Limit Value not be achieved by the required date. The Limit Values are to be achieved everywhere, unlike the domestic objectives which are restricted to areas of relevant public exposure.

The Air Quality Strategy for England, Scotland, Wales and Northern Ireland

- 9.5 The Air Quality Strategy for England, Scotland, Wales and Northern Ireland sets out the policy framework for ambient air quality over the short to medium term. The Strategy also defines the roles of central and local government, SEPA, industry, business, transport, individuals and other groups in maintaining and improving air quality.
- 9.6 The Strategy was first published in 1997 and fully revised in January 2000, with an Addendum produced in February 2003. It contains objectives for nine air pollutants of particular concern to human health: benzene, 1,3-butadiene, carbon monoxide, lead, nitrogen dioxide, ozone, particles, PAHs and sulphur dioxide. The objectives are derived from standards which are purely health based, but also take into account technical feasibility, practicality and economic factors. The strategy will be further revised and updated during 2006.
- 9.7 The Strategy and Addendum can be found on the Executive's website at www.scotland.gov.uk/Topics/Environment/Pollution/16215/4561

Local Air Quality Management

- 9.8 Part IV of the Environment Act 1995 requires local authorities to regularly review and assess air quality in their areas against seven of the nine objectives in the Air Quality Strategy. The exceptions are ozone and PAHs, since action at a local level is not currently considered to be cost effective or appropriate. The remaining objectives, and dates by which they should be achieved, are prescribed in regulations for this purpose (the Air Quality

(Scotland) Regulations 2000 and the Air Quality (Scotland) Amendment Regulations 2002).

- 9.9 If review and assessment indicates that any objective is unlikely to be met by the required date, the local authority concerned must declare an Air Quality Management Area (AQMA) and draw up an action plan outlining how it intends to tackle the issues identified.
- 9.10 The 1995 Act also makes it clear that authorities must have regard to any guidance issued by the Executive in relation to their responsibilities for local air quality management. Planning authorities should therefore be aware of the policy guidance produced by the Executive in February 2003 in this context:

<http://www.scotland.gov.uk/Topics/Environment/Pollution/16215/6151>

ENVIRONMENTAL NOISE

Introduction

- 10.1 Ambient noise is an issue of concern particularly for people living in large urban areas and near major roads, railways and airports.
- 10.2 The European Parliament and Council Directive relating to the assessment and Management of Environmental Noise [2002/49/EC](#), more commonly referred to as the Environmental Noise Directive (END) was published in the Official Journal of the EU in July 2002, and is due to be transposed into Scottish Regulations in December 2006. This directive concerns noise from road, rail and air traffic and within large urban areas, from industry, including ports. It focuses on the impact of such noise on individuals, complementing existing EU legislation which sets standards for noise emissions from specific sources.
- 10.3 The aim of END is to define a common approach across the European Union with the intention of avoiding, preventing or reducing on a prioritised basis the harmful effects, including annoyance, due to exposure to environmental noise. This will involve:
- informing the public about environmental noise and its effects;
 - the preparation of strategic noise maps for: large urban areas (referred to as 'agglomerations' in the END), major roads, major railways and major airports as defined in the END; and
 - preparing action plans, if appropriate, based on the results of the noise mapping exercise. Such plans will aim to manage and reduce environmental noise where necessary, and preserve environmental noise quality where it is good.

- 10.4 The noise mapping and action planning process is to be taken forward on a five-yearly rolling programme. The first round of mapping and action planning applies to the largest of the agglomerations (including the industries and ports within them), the busiest major roads and railways and all airports. Maps must be produced by 30 June 2007, with the action plans following a year later in 2008. During the second round (2012-13) all agglomerations, major roads, major railways and major airports as defined by END will be mapped and then action plans will be developed for them.
- 10.5 Like Air Quality, overall responsibility for END lies with the Scottish Ministers, and ultimately with the UK Government as the EU Member State. However, it is anticipated that the local authorities will play a central role. Other organisations such as SEPA will also be involved. The land use planning system may be expected to have a role in improving the ambient noise climate, and to ensuring that the future occupants of new noise sensitive developments are protected from environmental noise.
- 10.6 Planning authorities should therefore be aware of the potentially increasing prominence that may be given to Environmental Noise as a material consideration within the planning system.

CONTACT ADDRESSES

Environmental Protection Regimes

- For quick reference the table below gives a summary of the environmental protection regimes included in this PAN, the main regulatory bodies and a Scottish Executive contact who can provide further information concerning a particular environmental protection regime.

REGIME AND REGULATOR

Pollution Prevention and Control (PPC)

- **SEPA**

Responsible for authorising those who operate PPC processes, defined as falling within the definitions for Part A and Part B activities as described in Schedule 1 to the Pollution Prevention and Control (Scotland) Regulations 2000 (SSI 2000 No.323)

Local Air Quality Management

- **Local Authorities**

Responsible under Part IV of the Environment Act 1995 for regularly reviewing and assessing air quality in their areas against the objectives in the Air Quality Strategy.

- **SEPA**

Responsibilities in relation to emissions from controlled processes.

Protection of Water Environment

- **SEPA**

Any person, including the water authorities and industrial dischargers, who wishes to make a discharge of effluent or other matter into the water environment abstract or impound water from the water environment or carrying out engineering works in or adjacent to a watercourse is required to obtain an authorisation.

SCOTTISH EXECUTIVE CONTACT

Richard Robertson – SEPA Team

SEERAD – Environment Group
Waste and Pollution Reduction
Division
1-J Victoria Quay
Edinburgh EH6 6QQ
Tel: 0131 – 244 0179

Andrew Taylor – Air, Noise & Nuisance Team

SEERAD – Environment Group
Climate Change & Air Division
1-G(N) Victoria Quay
Edinburgh EH6 6QQ
Tel: 0131 244 7813

Joyce Carr – WFD Team

SEERAD – Environment Group
Water Division
1-H Victoria Quay
Edinburgh EH6 6QQ
Tel: 0131 – 244 7623

REGIME AND REGULATOR continued**Drinking Water Quality – public water**

- **The Scottish Executive**

Water Authorities must supply wholesome water for domestic purposes. It is a criminal offence to supply water unfit for human consumption.

- **Local Authorities**

Must take appropriate steps to keep themselves informed about the wholesomeness of public water supplies in their area and notify the water authority if not satisfied.

Drinking Water Quality – private water

- **Local Authorities**

Depending on the location of the supply, local authorities must take appropriate steps to keep themselves informed about the wholesomeness of private water supplies.

Contaminated Land

- **Local Authorities**

Under the contaminated land regime the primary regulatory role rests with the local authorities.

- **SEPA**

Under the contaminated land regime SEPA have four principal roles (see Annex paragraph 5.5).

Radioactive Substances

- **SEPA**

Responsible for ensuring that persons wishing to keep or use radioactive material are registered under the Radioactive Substances Act 1993 for that purpose and that the disposal of radioactive waste can be undertaken only by persons authorised under that Act.

SCOTTISH EXECUTIVE CONTACT continued

Colin McLaren – Drinking Water Quality Regulator for Scotland

SEERAD – Environment Group
DWQR
1-H Victoria Quay
Edinburgh EH6 6QQ
Tel: 0131 – 244 0186

Colin McLaren-DWQR

SEERAD – Environment Group
DWQR
1-H Victoria Quay
Edinburgh EH6 6QQ
Tel: 0131 – 244 0186

Tom Harvie-Clark- Pollution

SEERAD – Environment Group
Waste & Pollution Reduction Division
1-J Victoria Quay
Edinburgh EH6 6QQ
Tel: 0131 – 244 0402

Elizabeth Gray– Radioactive Waste

SEERAD – Environment Group
Environment Protection Unit
1-J Victoria Quay
Edinburgh EH6 6QQ
Tel: 0131 – 244 0400

REGIME AND REGULATOR continued• **HMNII**

Responsible for ensuring the safety of workers and members of the public from operations at nuclear sites through the Ionising Radiations Regulations 1985 and the licensing under the Nuclear Installations Act 1965.

Statutory Nuisance (including noise)• **Local Authorities**

In the case of some noise legislation, the police also have powers.

Litter• **Local Authorities**

The local authorities may impose a litter duty on occupiers of publicly accessible land by designating that land as a Litter Control Area. They may also impose requirements on occupiers of certain types of premises in respect of clearance of litter or refuse outside their premises. The Street Litter Control Notice Order 1991 lists the types of premises in this respect.

Light• **Local Authorities**

The local authorities deal with complaints as a general nuisance, but there is no specific legislation available to deal with complaints on a more formal basis.

SCOTTISH EXECUTIVE CONTACT

continued

Linda Story**Air Noise and Nuisance Team**

SEERAD – Environment Group
1-G Victoria Quay
Edinburgh EH6 6QQ
Tel: 0131 – 244 1521
e- mail noise@scotland.gsi.gov.uk

Adam Sinclair

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Air Noise and Nuisance Team

SEERAD – Environment Group
1-G Victoria Quay
Edinburgh EH6 6QQ
Tel: 0131 – 244 1521
E-mail noise@scotland.gsi.gov.uk

Scottish Environment Protection Agency (SEPA)

- SEPA operates through a network of 21 local offices throughout Scotland, including representation in the 3 Island Areas. SEPA operates a Main Board and 3 Regional Boards each chaired by a member of the Main Board. The responsibilities of the Board, its general composition and the number of Members are all in line with guidance issued by Scottish Ministers. SEPA's Chief Executive and Director of Environmental Protection and Improvement are provided below:

REGIME AND REGULATOR continued	SCOTTISH EXECUTIVE CONTACT continued
<ul style="list-style-type: none"> <p>• SEPA Corporate Office Erskine Court The Castle Business Park Stirling FK9 4TR Tel: 01786 – 457700 The Corporate Office provides support and policy direction for the three Regions, which are responsible for all operations of the organisation.</p> 	<p>Chief Executive Dr Campbell Gemmell</p> <p>Director of Environmental Protection & Improvement Colin Bayes</p>
<ul style="list-style-type: none"> <p>• SEPA South East Clearwater House Heriot-Watt Research Park Avenue North Riccarton Edinburgh EH14 4AP Tel: 0131 – 449 7296</p> 	<p>Planning Manager</p>
<ul style="list-style-type: none"> <p>• SEPA North Graesser House Fodderty Way Dingwall Business Park Dingwall IV15 9XB Tel: 01349 – 862021</p> 	<p>Planning Manager</p>
<ul style="list-style-type: none"> <p>• SEPA South West 5 Redwood Crescent Peel Park East Kilbride G75 0LA Tel: 01335 574200</p> 	<p>Planning Manager</p>

Water and Sewerage Services

3. On 1 April 2002, responsibility for the provision of water and sewerage services became the responsibility of Scottish Water, replacing the three former public water authorities. Its principal duties and functions are set out in the Local Government etc. (Scotland) Act 1994, the Sewerage (Scotland) Act 1968 (as amended), the Water (Scotland) Act 1980 (as amended), the Water Industry (Scotland) Act 2002, the Water Environment and Water Services (Scotland) Act 2003 and the Water Services etc. (Scotland) act 2005.

4. Waterwatch Scotland, previously known as Water Customer Consultation Panels, but with greater extended powers, was launched in April 2006, dedicated to represent the interests of commercial and domestic customers of Scottish Water. The Agency will handle customer complaints and will have powers to make statutory recommendations to Scottish water, Scottish Ministers, Water Industry Commission, Drinking Water Quality Regulator and SEPA on matters relevant to customer's interests. It will input also into the processes by which charges are set by Scottish Water.
5. The contact addresses for Scottish Water and for Waterwatch are as follows:

REGIME AND REGULATOR continued

- **Scottish Water**
Head Office
Castle House
6 Castle Drive
Carnegie Campus
Dunfermline
KY11 8GG
- **Waterwatch Scotland
The Convener's Office**
Forrester Lodge
Inglewood
Alloa FK10 2HU
Tel: 01259-214218

SCOTTISH EXECUTIVE CONTACT continued

- Chief Executive**
Dr Jon Hargreaves
- Convener**
Ian Smith

GLOSSARY

Agenda 21 A comprehensive programme of action needed throughout the world to achieve a more sustainable pattern of development for the 21st century. See also Local Agenda 21.

Sustainable Development: The UK Strategy 1994 (Cm 2426).

BAT Best Available Techniques-the main basis for determining standards under IPPC and the PPC Regulations.

BMPs Best Management Practices include a range of techniques which aim to reduce the impact of surface water discharge.

BPEO Best practicable environmental option.

CAR Water Environment (Controlled Activities) Regulations 2005

CoPA Control of Pollution Act 1974.

Critical group For a given source, the critical group of members of the public whose exposure is reasonably homogeneous and is typical of people receiving the highest dose from the given source.

Critical load A quantitative estimate of exposure to pollutants below which no significant harmful environmental effects result. Critical load maps can be compared with current deposition maps to show areas where environmental damage occurs.

Sustainable Development: The UK Strategy 1994 (Cm 2426).

Dangerous Substance A substance contained either in Lists I or II of Directive 76/464/EEC. The potentially most dangerous substances are contained in List I on account of their toxicity, persistence and bio-accumulation. List II contains further substances which can also pose a threat to the environment in certain circumstances.

Decisions (EU) Directly applicable in law, but addressed specifically to named individuals, companies or Member States. Not often used in the environmental field.

Directives (EU) Set out the aims to be achieved by domestic legislation while leaving the way in which this is done to be decided by individual Member States. Most EC environmental laws take the form of Directives.

EIA Environmental Impact Assessment.

Environment Consists of all, or any, of the following media, namely, the air, water and land; and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground. **The Environmental Protection Act 1990.**

EU European Union.

General Binding Rule(CAR) A general binding rule is a *de facto* authorisation under the CAR Regulations for activities which present a small risk to the water environment. No registration or licensing is required.

Groundwater Water held in water-bearing rocks, in pores and fissures underground.

Harm Harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes offence caused to any of his senses or harm to his property. **The Environmental Protection Act 1990.**

HMNII Her Majesty's Nuclear Installations Inspectorate.

HNDA High Natural Dispersion Area.

HSC Hazardous Substance Consent under the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993.

HSE Health and Safety Executive.

IPC Integrated Pollution Control is an approach to pollution control in the UK, which recognises the need to look at the environment as a whole, so that solutions to particular pollution problems take account of potential effects upon all environmental media.

LAPC Local Air Pollution Control is for prescribed processes (Part B processes) giving rise to less significant air pollution, not subject to Integrated Pollution Control.

Local Agenda 21 Initiative to carry forward action proposed in Agenda 21.

NAQS The National Air Quality Strategy is a system of local air quality management set out in Part IV of the Environment Act 1995. Local authorities will be required to carry out periodic reviews of air quality and assess the present and future quality against the standards and objectives of the NAQS. A key provision of the strategy is that the management of local air quality should be within the remit of local authorities.

NVZ Nitrate Vulnerable Zone.

Permitted Development Rights A form of general planning permission, granted under the General Permitted Development Order, enabling certain types of generally minor development to be undertaken without the need for a specific planning consent.

Pollutant A substance which is present at concentrations which cause harm or exceed an environmental quality standard.

PPC Pollution Prevention and Control

Process Any activities carried on in Great Britain, whether on premises or by means of mobile plant, which are capable of causing pollution of the environment. **The Environmental Protection Act 1990 Part 1.**

RBD River Basin District- area containing all inter-related water bodies, used for planning water resource management under the Water Framework Directive.

RBMP River Basin Management Plan- water resource management plan for 6-year period, defined in WFD.

Regulations (EU) Set exactly the same law throughout the entire Union and apply directly in all Member States: they do not have to be implemented by means of national legislation. Regulations are used where it is essential that identical measures apply in all Member States, for example, where products circulate throughout the Community.

SEA Strategic Environmental Assessment.

SEDD Scottish Executive Development Department

SEERAD Scottish Executive Environment and Rural Affairs Department

SEPA Scottish Environment Protection Agency.

SNH Scottish Natural Heritage.

Suitable for Use Principle This requires remediation action only to prevent significant harm or pollution of controlled waters occurring on the basis of a cost effective means being available, taking into account the actual or intended use of the site.

Sustainable Development Development that meets the needs of the present without compromising the ability of future generations to meet their own needs. **Our Common Future 1987.**

WEWS The Water Environment and Water Services (Scotland) Act 2003

WFD The Water Framework Directive (2000/60/EC).

Wholesomeness Defined for public water supplies in the Water Supply (Water Quality) (Scotland) Regulations 1990. Defined for private water supplies in the Private Water Supplies (Scotland) Regulations 1992.

SELECTED BIBLIOGRAPHY

- The Interaction Between Land Use Planning and Environmental Regulation (Scottish Executive Social Research 2004. ISBN 0 7559 3813 5)
- Choosing Our Future, Scotland's Sustainable Development Strategy (2005) ISBN 0755948513
- Control of Pollution Act 1974, London: HMSO. ISBN 0105440744.
- Food and Environment Protection Act 1985, Chapter 48, London: HMSO ISBN 0105448850.
- Environmental Protection Act 1990, London: HMSO. ISBN 0105443905.
- Radioactive Substances Act 1993 London: HMSO ISBN 0105412937
- Environment Act 1995, London: HMSO. ISBN 0105425958.
- The Planning (Hazardous Substances)(Scotland) Act 1997 HMSO ISBN 0105410977
- The Pollution Prevention and Control Act 1999. HMSO ISBN 0105424994
- The Water Environment and Water Services (Scotland) Act 2003 (WEWS) HMSO ISBN0105900451
- The Nature Conservation(Scotland) Act 2004
- The Town and Country Planning (Use Classes) (Scotland) Order 1989 (SI 1989/147 as amended by SI 1993/1038), London: HMSO. ISBN 0110961471.
- The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993, (SI 1993 No. 323), London: HMSO. ISBN 0110333233.
- The Environmental Impact Assessment (Scotland) Regulations 1999. ISBN 0110591070
- The Pollution Prevention and Control (Scotland) Regulations 2000: ISBN 0110594673
- The Planning (Control of Major Accident Hazards)(Scotland) Regulations2000 ISBN 0110593715
- Control of Major Accident Hazards (Amendment) Regulations2005: ISBN 0110727665
- The Water Environment (Controlled Activities)(Scotland) Regulations 2005 ISBN 0755925513
- SDD Circular 18/1986 The Use of Conditions in Planning Permissions.
- SOEnD Circular 5/1993 Planning Controls for Hazardous Substances – The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993.
- SOEnD Circular 11/1993 Planning Controls for Hazardous Substances. Consequential amendments to planning legislation.
- SOEnD Circular 16/1993 Hazardous Substances Consent – A Guide for Industry.
- SOEnD Circular 6/1995 Habitats and Birds Directives.
- SE Circular 15/1999 The Environmental Impact Assessment (Scotland) Regulations 1999.
- SOAEFD Engineering, Water and Waste Directorate (1995) Drinking Water Quality in Scotland 1994, Edinburgh: HMSO. ISBN 0748030344.
- Sustainable Urban Drainage Systems Design Manual for Scotland and Northern Ireland CIRIA C521 March 2000
- Towards Sustainability: The EC Sixth Environment Action Programme 2002-2012, Commission of the European Community (EC). Official publication of the EC,.
- Planning Policy Statement 23 Planning and Pollution Control (2004), Office of the Depute Prime Minister London: HMSO. ISBN 0117539279.

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