

WRITTEN EVIDENCE FROM CONSUMER FOCUS SCOTLAND**About Consumer Focus Scotland**

Consumer Focus Scotland is the independent consumer champion for Scotland. We are rooted in over 30 years of work promoting the interests of consumers, particularly those who experience disadvantage in society.

Part of Consumer Focus, our structure reflects the devolved nature of the UK. Consumer Focus Scotland works on issues that affect consumers in Scotland, while at the same time feeding into and drawing on work done at a GB, UK and European level.

We work to secure a fair deal for consumers in different aspects of their lives by promoting fairer markets, greater value for money, improved customer service and more responsive public services. We represent consumers of all kinds: tenants, householders, patients, parents, energy users, solicitors' clients, postal service users or shoppers.

We aim to influence change and shape policy to reflect the needs of consumers. We do this in an informed way based on the evidence we gather through research and our unique knowledge of consumer issues.

**WATER RESOURCES (SCOTLAND) BILL
SECTION ONE – INTRODUCTION AND BACKGROUND**

Consumer Focus Scotland welcomes and supports the overall intention in the Water Resources (Scotland) Bill to set out a framework for making the most of Scotland's water resources. We remain absolutely clear, however, that there should be no adverse impact on the core services provided by Scottish Water, and no additional costs to its customers.

Our response to the specific questions posed in the Committee's Call for Views are contained in Section Two of this evidence. However, we believe it is important to view the specific detail in the Bill within the wider context of what the Scottish Government's Hydro Nation agenda is seeking to achieve. We therefore begin by outlining our policy position on this wider dimension. While we remain supportive of both the broad policy objectives and the detail in the Bill, we identify some key areas where we believe the Scottish Government's proposals, and the Bill as it stands, miss some important opportunities and contain some inherent contradictions from the consumer perspective. Section Three of our evidence highlights some further issues that we believe are important and relevant to the Hydro Nation agenda and which the Committee may wish to consider as it scrutinises the Bill.

Our broad concerns and our recommendations, in brief, are as follows. These are outlined fully in our response to the Scottish Government's consultation earlier this year on the Hydro Nation proposals¹. Generally, we believe that much more needs to be done to explain and make clear how the Hydro Nation agenda will benefit consumers in Scotland. Our focus is on how the proposals may impact on Scottish consumers and we make a

¹ Consumer Focus Scotland, *Response to "Scotland – The Hydro Nation – Prospectus and Proposals for Legislation*, March 2012, http://www.consumerfocus.org.uk/scotland/files/2012/03/Response-to-Hydro-Nation-consultation_12.03.12.pdf

range of recommendations on how they might be strengthened to bring consumer benefit. These are:

- Clarify the benefits, if any, for water consumers. While the proposals are strong on the development of the economic potential of water, it is less clear on how the economic gains and any additional income generated by Scottish Water will be treated and whether any of it would be passed on to consumers. As the ultimate owners of Scottish Water, will its customers benefit from its income generating activities in the form of reduced bills?
- Set the proposals within the wider sustainable development agenda. As well as the economic benefits and gains deriving from the Hydro Nation proposals, there should be an equal focus on addressing social justice issues, as well as the wider environmental impacts, thereby embedding all three strands of sustainable development within the Bill and the ongoing implementation of the Hydro Nation proposals.
- Balance the “International Response” with the need to address outstanding consumer issues at home such as affordability and water debt. We welcome, and fully support, the Scottish Government’s commitment to international development and tackling global water issues. However, it is critical that this agenda is balanced by ensuring that all consumers in Scotland can access and afford a clean water supply. We believe that is a significant omission and that the Hydro Nation agenda should contain a clear commitment to tackling any outstanding affordability and water poverty issues at home.
- Promote stronger linkages within Government, and for water industry stakeholders, consumers and the wider Scottish public, between water efficiency and energy usage. The Hydro Nation agenda and the Bill contain welcome and clear directions and provisions to Scottish Water to maximise the best use of both our water and our renewable energy resources but make no reference to the role of consumers as the end users of both. We make a range of recommendations in section two on how the Scottish Government should create stronger linkages between water efficiency and energy efficiency policy agendas. We would like to see the proposals recognise the clear opportunities, using hydro power and renewable energy generally, to help alleviate fuel poverty, and to go further in relation to energy efficiency and in encouraging consumers to use both water and energy responsibly.
- Recognise that the current system for water and sewerage charging does not incentivise water efficiency as it is linked to Council Tax banding and not related to water usage and that not to have a long term vision for a charging system that takes account of the value of our water resource is a significant omission from the Hydro Nation agenda. This presents a clear opportunity to at least start an informed debate within Scotland and a considered review of alternative options for the longer term.
- Ensure that the opening of the retail market in England brings benefits rather than risks to Scottish Water and to customers in Scotland.
- Establish a Hydro Nation Advisory Board to monitor, at strategic level, progress in developing and implementing the proposals. Once the Bill is in statute, there will be a development agenda for implementing these important proposals. Effective governance of this agenda will be critical. In the light of our comments above, it will be equally critical for any governing structure to

contain a balance of supply and demand side interests, including the consumer interest.

SECTION TWO – RESPONSE TO THE COMMITTEE’S SPECIFIC QUESTIONS

PART 1: DEVELOPMENT OF WATER RESOURCES

Q1. Section 1 of the Bill proposes placing a duty on Scottish Ministers to take such reasonable steps as they consider appropriate to ensure the development of the value of Scotland’s water resources. Do you consider these proposals to be sufficient to drive forward the delivery of the Scottish Government’s aim of making Scotland a Hydro Nation?

We believe that the provisions in the Bill should be strengthened as follows:

- There should be an explicit statement about what is meant by “value” in relation to Scotland’s water resources. Section 1 (3) states that the reference to value includes the “economic and other benefit.” Yet the Policy Memorandum and the Explanatory Notes both specify that social and environmental value should be maximised, and in response to this being identified as a key priority by stakeholders, including ourselves, in the consultation. We see no reason why subsection (3) should not be amended to identify “value” as including economic, social and environmental value. Indeed, we consider this to be essential.
- We support the view in 1 (a) that Scottish Ministers must take “reasonable steps” but question whether qualifying this with “as they consider appropriate” would reduce Ministers’ accountability to Parliament.
- Section 1 (2) directs that Scottish Ministers are to act consistently with the proper exercise of their functions under the Climate Change (Scotland) Act 2009 and the Water Environment and Water Services (Scotland) Act 2003. It is equally important that Ministers’ duties to protect the customer interest are included here. We believe that this direction should be extended to include, at least, Ministers’ exercise of their functions under the Water Industry (Scotland) Act 2002 where, for example, in section 49 they “must have regard to the interests of every person who is a customer or potential customer of Scottish Water....”

Q2. What are your views on the proposal that Scottish Ministers should be able to direct public bodies to participate in the development of water resources?

We support the proposal, the selection of the designated five public bodies, the powers to add or remove a body and, importantly, the requirement that Ministers consult with the relevant bodies on modifications to the designated list and on the directions that may be issued to each body.

Q3. Do you have any comments on the requirement for Scottish Ministers to report to the Scottish Parliament on these activities every three years? Is this sufficient to ensure that Scottish Ministers will be held accountable for meeting the duty placed upon them to ensure the development of Scotland’s water resources?

In the light of the long term nature of the Hydro Nation agenda, with the emphasis on innovation and change, we agree that Scottish Ministers should report to the Scottish Parliament **every** three years. However, our reading of the Bill, the Policy Memorandum

and the Explanatory Notes is that there is only a requirement to report on **one** occasion, three years from the date on which section 1 comes into force. Our understanding could be wrong but, if so, the Bill should be re-drafted for the avoidance of doubt.

We believe that Ministers should report against a strategic delivery plan with short, medium and long term targets and outcome-based success factors. These should be agreed with stakeholders and it is our view that this should be within the remit of a strategic Hydro Nation Advisory Board, similar to the Scottish Energy Advisory Board. This should be the role of the proposed Hydro Nation Forum.

Part 2: Control of Water Abstraction

Q4. In your view is the new licensing regime necessary and will it offer the desired benefit of ensuring that the value of the water resources of Scotland are maximised for the people of Scotland?

Q5. Is the threshold set in the Bill for defining large scale abstractions of greater than 10 megalitres of water per day appropriate?

Q6. Is the list of possible purposes by which a large scale abstraction may be exempt from requiring Ministerial approval, such as where an abstraction is carried out for the purpose of generating electricity by hydro-power, appropriate?

We have no particular comments on Part 2.

Part 3: Scottish Water's functions

Q7. What are your views on Scottish Water being given specific powers to develop its assets and support the generation of renewable energy?

We support these proposals with the clear proviso that Scottish Water must not compromise the effective and efficient exercise of its core functions to consumers in Scotland, including customers and potential customers.

In relation to the specific wording in the Bill about powers for Scottish Water, we make similar points to those relating to Part 1 and Ministers' powers. Section 21 should make clear that the "value" of Scotland's water resources includes the economic, social and environmental value. In section 22 (1) we question the intention that it is for Scottish Water alone to consider whether its actions are consistent with the exercise of its core functions and suggest that this should be re-drafted to state "Scottish Water must take reasonable steps to develop the value of its assets and expertise while this is not inconsistent with the economic, efficient and effective exercise of its core functions." The same principle applies to section 23 (1).

Notwithstanding this, we welcome the proposals to develop Scotland's hydro power potential, to reduce Scottish Water's carbon footprint and to enable it to use its land assets to generate additional renewable energy.

As one of Scotland's principal users of electricity, it is important that Scottish Water continues to both seek savings from energy efficiency and invest in renewable energy to drive down costs for water consumers. And it is equally important that any additional

renewable energy capacity is used to the best benefit of consumers and communities in Scotland.

At this stage, we have no specific amendments to the Bill to propose. However, we would welcome the Committee's consideration of how we could maximise the role of Scottish Water and the synergies between energy and water.

Energy prices for consumers have risen sharply in recent years. Fuel poverty rates in Scotland have also risen, particularly in rural areas, as the increases in costs have outstripped gains made through improved energy efficiency. Projections suggest that there will be further pressure on energy prices, driven by a combination of rising fossil fuel costs and the need to invest in low carbon energy infrastructure. The Scottish Government has a target to eliminate fuel poverty, as far as reasonably possible, by 2016, as well as medium and longer term targets to reduce climate change emissions.

It is against this background that the development of renewable energy is taking place, and it is important to emphasise that the sector is, at present, supported heavily by levies on consumers' bills. We believe, therefore, that Scottish Water's work in this area, as a publicly funded body, needs to be developed in a coherent way which explicitly takes account of consumers' circumstances and experiences, as well as wider opportunities. Three specific recommendations are set out below.

Develop renewable energy resources in ways which reflect the needs of consumers and communities

All forms of energy generation have local and national environmental impacts. The development of any infrastructure over which Scottish Water has influence should reflect best practice in terms of community engagement from the design stage onwards. It should seek to maximise public benefits beyond those required as a minimum by the planning system. Scottish Water has made significant improvements in community engagement processes in recent years. However, it will have to continue to improve on these processes if it is to venture into larger scale renewable energy developments with the prospect of polarised debates on environmental impacts and the need to be seen clearly to be sensitive to the concerns of local communities. Sensitive management of environmental impact should remain firmly part on the Hydro Nation agenda. Consumer Focus Scotland is currently acting as a "critical friend" advising Scottish Water on its statutory Consultation Code and its consultation processes and it will be important for this to be a process of continuous improvement.

Develop hydro power assets in ways that connect with other infrastructure

We believe that Scottish Water should develop hydro power assets in ways that connect with other infrastructure to increase pump-storage capacity across Scotland, where possible. Wind power is, obviously, dependent on the weather, and pump storage provides a means of 'banking' electricity which will help smooth out supply and demand fluctuations, and thus also the costs for consumers.

Ensure that all renewable energy developments on Scottish Water land are accompanied by a well managed Community Benefit Fund which maximises public benefit

Typically, new renewable energy developments are accompanied by a Community Benefit Fund (CBF). Our recent report on CBFs² shows that there are opportunities to improve the transparency and consistency of the management of these funds. We also believe that, increasingly, there will be opportunities to use a proportion of each fund to help deliver energy efficiency measures to reduce energy costs and fuel poverty for local consumers, while at the same time also reducing climate change emissions.

Depending on the scale of the fund, there may be a role for local authorities in ensuring that benefits are distributed across a wider area, although the highest level of support should continue to be available to the communities most immediately affected. We believe that a wider debate is needed, as the sums involved in CBFs increase both individually and in aggregate, as the renewable energy industry grows. Scottish Water, as a public sector developer, should have a role in that discussion, not least in identifying ways in which the income gained by Scottish Water can be used in ways to benefit all of its consumers.

Water efficiency and energy efficiency

The further development of physical assets by Scottish Water should be balanced with the need to manage our water resources more effectively. Lowering consumer consumption of water through both water efficiency and the development of a strategy on water reuse would require less treatment of water by Scottish Water which would then be reflected in lower operational costs. In turn, these savings could be passed on to consumers through lower charges.

A clear omission, at present, in the Hydro Nation agenda is the role that consumers can play in maximising the value of our water resource through water efficiency and behaviour change. This is an important omission and runs a reputational risk in the international environment if we fail to promote this message domestically.

The Scottish Government has already committed to increasing the awareness of energy efficiency and encouraging behavioural change.³ We believe that there should be a clear and demonstrable synergy between the Energy Efficiency Action Plan and the Hydro Nation initiative. Water efficiency should be embedded within existing public information channels on energy efficiency. Moreover, the launch of the Hydro Nation agenda and the passage of the Bill, present clear opportunities to roll out new information initiatives to encourage the sensible use of water. Raising awareness of the link between water usage and energy will help all consumers save money on their energy bills and we expect the Scottish Government to demonstrate clear leadership in this important area.

A particular focus on reaching out to low income consumers will help reduce fuel poverty. We recommend that the Scottish Government should integrate advice assistance on water efficiency with its existing and developing programmes on fuel poverty and energy efficiency, including the Energy Assistance Package, the proposed National Retrofit Programme, the Sustainable Housing Strategy, and generally as first tier advice provided by the Home Energy Helpline.

Charging for water

² Consumer Focus Scotland, *Reaping the Benefits of Renewables*, April 2012, <http://www.consumerfocus.org.uk/scotland/files/2012/04/Reaping-the-benefits-of-renewables-WEB-version.pdf>

³ <http://www.scotland.gov.uk/Publications/2009/10/07160816>

Of course, the current water and sewerage charging structure in Scotland does not incentivise water efficiency as it is linked to Council Tax banding and not related to water usage. We are not suggesting that, at this stage, the current charging system should be dismantled with the possibility of unintended consequences on bills and existing protection for some consumers. However, not to have a long term vision for a charging system that takes account of the value of our water resource is a significant omission from the Hydro Nation agenda which presents a clear opportunity to at least start an informed debate within Scotland and a considered review of alternative options. At the direction of Ministers, Scottish Water is undertaking a Water Efficiency Trial, which includes an exploration of how a fiscal incentive might bring about behaviour change. This trial should be included as a key feature in the Hydro Nation action plan.

Q8. Are you content that the definition of core powers will provide sufficient safeguards for core water and sewerage functions against risks incurred by Scottish Water in pursuing non-core functions?

We are content that section 24 contains an over-arching clause that embraces all legislation relating to the provision of water or sewerage services in Scotland.

Part 4: Raw Water Quality

Q9. Do you have any views about the proposals to give Scottish Water new powers of entry and inspection of premises (other than a house) in relation to the quality of raw water?

Q10. Do you have any views on how the proposal allowing Scottish Water to enter into agreements with owners or occupiers of land to undertake works to prevent the deterioration of water quality will work in practice and whether this is necessary and/or appropriate?

We have no particular comments on Part 4.

Part 5: Non-Domestic Services

Q11. Are the new duties to be placed on landlords appropriate and do they raise any concerns?

We have no particular comments on Question 11.

Q12. Do you have any comments on the proposed arrangements for the creation of a scheme setting out the terms and conditions under which a deemed contract for the provision of water is to exist?

We support the principle that non-domestic customers that are receiving services from a licensed provider should pay for them. However, our experience in the energy sector tells us that lack of clarity and agreement between suppliers and customers on whether, and what services are being provided can cause significant, sometimes intractable, problems. The detail of the proposed scheme for deemed contracts will be critical and we welcome the proposal that the Water Industry Commission for Scotland should be required to consult us in the development of the scheme.

Part 6: Sewerage Network

Q13. Do you have any comments about the proposal granting Scottish Water powers of entry and inspection of land or non-domestic property in relation to passing substances and pollutants into the sewer network?

Q14. Do you have any comments about the creation and enforcement of a new offence of passing, or permitting to be passed, fat, oil or grease into the public sewer network?

We support these proposals relating to the more proactive management of discharges from trade premises into the sewer network. More responsible behaviour by traders should result in savings in Scottish Water's operational costs which we would expect to see passed on to consumers through lower charges.

Q15. Do you have any comments on the proposal to allow any one proprietor to carry out works to private sewage treatment works, such as septic tanks, to maintain and empty these shared assets without having to secure the consent of the other owners?

We agree that there is a need to improve public awareness of the importance of managing and maintaining septic tanks. We believe the proposal is acceptable given the detailed safeguards set out in the Bill.

We do believe, however, that an ambitious Hydro Nation agenda should give due consideration to the longer term desirability, in the interests of public health, to investigate how innovation by Scottish Water could provide efficient and effective means of increasing connections to the sewerage network, balancing the benefits against the costs involved.

Part 7: Water Shortage Orders

Q16. Are the proposals to create new water shortage and emergency water shortage orders proportionate and will they have the desired effect of dealing with temporary water shortages?

We agree that there is a need to update the law in relation to the management of interruptions to the public water supply. We believe that the proposals should have the desired effect in dealing with temporary water shortages if the Bill is clarified and strengthened as follows:

- We welcome the fact that paragraph 47 of the Policy Memorandum makes it clear that the Scottish Government has listened to concerns expressed by ourselves and others that care should be taken to ensure equity of approach to domestic and non-domestic water users and that the draft provisions were adjusted in light of these concerns. However, we believe that the wording in the Bill is still not explicit enough in this respect and that it should clearly set out that the orders would apply to all domestic and non-domestic customers. Provided this is made clear, then the list of water saving measures set out in Schedule 2 is appropriate, given that it covers non-essential water use. There is, however, a catch-all provision at the end

giving Scottish Water and Scottish Ministers powers to take any additional measures they consider necessary. This seems reasonable but we believe should be accompanied by a requirement to protect vulnerable consumers with special needs who may require above-average water use, together with similar exclusions for premises providing essential services, for example, care homes.

- In the making of an order, under section 37, there should be a requirement on Scottish Ministers to inform the National Consumer Council, as the statutory consumer representative body, that such an order has been made. In section 42, there should be a similar requirement in respect of Scottish Water.
- Section 42 (1) should be strengthened to read that “Scottish Water must take **all reasonable steps** to bring its recommendation under subsection (1) (b) to the attention of people in the area. In this respect, we believe that section 1 of Schedule 1 should specify that Scottish Water gives **adequate forward notice** to the public of the proposal to implement a water shortage order. We also welcome the proposal that this should be published in a local newspaper. This should be supplemented by a requirement that this is in a hard copy and not an online version and also that it should be published via local radio. This is because the most vulnerable consumers are least likely to have internet access. Similar provisions should apply when an order is revoked (Schedule 1 section 11).

Q17. Do you have any comments on the estimated costs associated with the Bill?

We have no particular comment on this question.

SECTION THREE – ADDITIONAL ISSUES

This section of our evidence contains some additional issues that we believe are important and relevant to the Hydro Nation agenda and which the Committee may wish to consider as it scrutinises the Bill.

International Response

We welcome, and fully support, the Scottish Government’s commitment to international development and tackling global water issues. However, it is critical that this agenda is balanced by ensuring that all consumers in Scotland can access and afford a clean water supply. We believe that is a significant omission, particularly in relation to maximising the social value of our water, and that the Hydro Nation agenda should contain a clear commitment to tackling any outstanding water debt and affordability issues at home.

The Impact of the UK Water Bill

The UK Government’s proposals to open up the English market to retail competition, contained within the recently published Water Bill⁴, will provide opportunities for Scottish Water’s subsidiary, Business Stream, to secure new contracts. It will be critical that the expansion of Business Stream’s activity and scope does not compromise Scottish Water’s ability to deliver its core service, continue to improve its performance, and keep costs down and consumers’ bills as low as possible. Nor should any additional costs be passed on to Business Stream customers in Scotland.

⁴ HM Government, *Draft Water Bill*, July 2012, <http://www.official-documents.gov.uk/document/cm83/8375/8375.pdf>

However, what is being proposed in the Water Bill will, in effect lead to a UK market, with new entrants operating in Scotland. While this will bring clear opportunities and potential benefits to customers in Scotland, it will present real risks if the new market in England is opened without full and effective preparation. We are aware that the Scottish Government is working closely with EFRA, Ofwat and the Water Industry Commission for Scotland (WICS) to ensure that any risks to the Scottish market are mitigated in advance and we support the recommendations set out by WICS as to how this should be done in the light of the experience of the opening of the retail market in Scotland.⁵ This is a key issue which should form part of the action plan for the Hydro Nation.

We would also expect the Scottish Government to consider how any additional profits from new trading activities by Business Stream could be passed on to domestic and non-domestic consumers by way of reduced bills. Profits could also be spent on improving services to consumers, especially within discretionary spend areas such as external sewer flooding and low pressure.

European Union Blueprint to Safeguard Europe's Water Resources⁶

The European Commission is currently considering its response to the public consultation on its range of proposals to improve water management in Europe and to safeguard water resources for all users. It would not make sense for either the Water Resources (Scotland) Bill or the wider Hydro Nation agenda to proceed without taking due account of this emerging and important policy context.

⁵ Water Industry Commission for Scotland, *Submission to the EFRA Committee Inquiry on the White Paper – Water for Life*, 2011, <http://www.watercommission.co.uk/UserFiles/Documents/EFRA%20submission.pdf>

⁶ European Commission, *A Blueprint to Safeguard Europe's Water Resources*, March 2012, <http://ec.europa.eu/environment/consultations/pdf/blueprint.pdf>