

SPICe Briefing

Water Resources (Scotland) Bill

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The Water Resources (Scotland) Bill was introduced in the Scottish Parliament by Alex Neil MSP, Cabinet Secretary for Infrastructure and Capital Investment, on 27 June 2012. The Bill deals with a number of water related issues, including the development of Scotland's water resources, a new framework to govern the abstraction of water over a specified threshold, Scottish Water's functions and its exercise of those functions, protecting "raw water" sources, creating contracts for certain non-domestic water and sewerage services, protecting the public sewerage network from harm and allowing for maintenance of private sewerage works, and enabling the making of water shortage orders.



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EXECUTIVE SUMMARY

The Water Resources (Scotland) Bill was introduced by Alex Neil MSP on 27 June 2012. It contains provisions relating to the development and use of Scotland's water resources, as briefly summarised below:

Development of Water Resources: The Bill would allow Scottish Ministers to "take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland's water resources". Scottish Ministers are required to lay a report on how they have fulfilled this duty after a three year "reporting period".

The Bill would also give Scottish Ministers the power to direct a "designated body" to participate in any water resources related development. Designated bodies identified in the Bill are Scottish Water, SEPA, SNH, Scottish Enterprise and Highlands and Islands Enterprise. Scottish Ministers may add or remove bodies from this list.

Control of Water Abstraction: The Bill would require anyone wishing to abstract water from bodies of surface water or groundwater within Scotland at a rate above 10 megalitres per day, or other amount specified in regulations, to obtain approval from Scottish Ministers. The Bill specifies a number of exemptions from this requirement.

Scottish Water's Functions: The Bill would amend the Water Industry (Scotland) Act 2002 to allow Scottish Water to do anything which it considers will assist in the development of the value of Scotland's water resources. It allows Scottish Water take reasonable steps to develop its property, rights, other assets and expertise and promote the use of its assets for the generation of renewable energy.

The Bill would define Scottish Water's core functions as the functions established under the Sewerage (Scotland) Act 1968, the Water (Scotland) Act 1980 and any other Act as it relates to the provision of water and sewerage services in Scotland.

The Bill would allow Scottish Ministers to lend money directly to subsidiaries of Scottish Water and for these subsidiaries to borrow from other sources. The total amount that can be borrowed by Scottish Water and its subsidiaries cannot exceed the amount set out in the annual Budget (Scotland) Act.

Raw Water Quality: The Water (Scotland) Act 1980 would be amended to allow a person authorised by Scottish Water to enter premises for the purposes of assessing or monitoring the quality of raw water contained in a body of water. The Bill would also allow Scottish Water to enter into agreements with the owners or occupiers of land with a view to taking action to prevent the deterioration of raw water quality or removing/reducing the need to treat that water.

Non-domestic services: The Bill would establish that "deemed contracts" exist between water and sewerage services providers and the occupier of premises where no written contract currently exists. The Bill would also place a duty on the owners of commercial property to inform the water and sewerage provider when there is a change in tenant or when the property falls vacant.

Sewerage Network: The Bill would allow Scottish Water to impose a condition on any consent for a trade effluent notice with the aim of “the elimination from or diminution in any trade effluent of any priority substance or pollutant.” (i.e. preventing or reducing the release of pollutant into the sewer system).

The Bill would introduce a new offence of passing fat, oil or grease into the public sewer system and would allow Scottish Water to recover costs in dealing with such blockages from the owners of commercial premises that allow these to be poured into the sewer. Scottish Water’s power of entry would be amended to allow for the installation of sampling and testing equipment.

This Bill would introduce a new system for the maintenance of private sewage treatment works, including most septic tanks, that are owned by two or more people and the discharge of their contents is subject to authorisation under the Controlled Activities Regulations.

Water Shortage Orders: Scottish Water may request that Scottish Ministers make a water shortage order if it believes that there is a serious deficiency of water supplies in an area or there is a threat of a serious deficiency. It would be an offence for a person, without reasonable excuse, to fail to comply with the terms of a water saving order.

Scottish Ministers will have the power to give directions to Scottish Water on the exercise of its functions under a water shortage order and anyone aggrieved by a water shortage order may appeal to a Sheriff against the making of the order or the terms of the order.

If Scottish Water believes that there is a threat of a serious deficiency of water supplies in an area then it must publicise information about the threat in that area along with recommendations on water saving actions it considers will assist in abating that threat.

INTRODUCTION

This briefing outlines the current structure, funding, legislative framework, ownership and regulation of Scotland's water resources, with a particular focus on Scottish Water, and outlines the changes to these proposed in the Water Resources (Scotland) Bill ("the Bill") which was introduced in the Scottish Parliament on 27 June 2012 by Alex Neil MSP, Cabinet Secretary for Infrastructure and Capital Investment.

SCOTTISH WATER

STRUCTURE OF SCOTTISH WATER

Scottish Water Group consists of Scottish Water, a public corporation, and a number of subsidiaries, as outlined below:

Scottish Water: [Scottish Water](#) is the statutory provider of water and waste water services to domestic properties in Scotland and wholesale services to "Licensed Providers".

Scottish Water Business Stream: [Scottish Water Business Stream](#) ("Business Stream") is a wholly-owned subsidiary of Scottish Water with its own board and independent management team. It provides water and waste water services for business customers in competition with other companies in the competitive retail market for water and waste water services to business customers which began operation on 1 April 2008.

Scottish Water Horizons: [Scottish Water Horizons](#) is a wholly-owned subsidiary of Scottish Water that aims to utilise Scottish Water's physical and personnel assets to assist Scotland's economy and protect its environment. The services provided by Scottish Water Horizons are discretionary, i.e. Scottish Water is not required to provide such services by statute. Within Scottish Water Horizons there are two distinct elements:

- [Horizons Environment](#): Formerly known as Scottish Water Waste Services, Horizons Environment deals with recycling food waste, composting garden waste, disposing of sludge and liquid waste, emptying septic tanks and handling waste disposal from major events. Horizons Environment also runs an anaerobic digestion facility near Cumbernauld which can produce electricity from food waste.
- [Horizons Hydro Engineering](#): Formerly known as OneSource, Horizons Hydro Engineering specialises in the design and construction of water and waste water infrastructure for housing and commercial developments.

Scottish Water International: Launched during January 2012, [Scottish Water International](#) aims to utilise Scottish Water's expertise to offer products and specialist consultancy services to utilities, foreign governments and other international clients.

Scottish Water Horizons, Scottish Water Business Stream Holdings Ltd, Scottish Water Business Stream Ltd and Scottish Water International are the responsibility of Scottish Water Horizons Holding Ltd, a wholly owned subsidiary of Scottish Water.

Scottish Water also jointly owns 51% of Scottish Water Solutions 2, the remaining 49% being owned by Thistle Water (a consortium of Jacobs UK Ltd, Laing O'Rourke Infrastructure Ltd and Veolia Water UK Plc). This company was created to deliver part of Scottish Water's capital investment programme for the 2010 to 2015 regulatory period.

LEGISLATIVE FRAMEWORK

Scottish Water was established by the Water Industry (Scotland) Act 2002 (“the 2002 Act”). It replaced three regional water authorities (North, East and West of Scotland Water) which were established by the Local Government etc. (Scotland) Act 1994. Prior to that water and waste water services in Scotland were provided by regional councils.

Scottish Water exercises statutory water and sewerage functions under the provisions of the Sewerage (Scotland) Act 1968 and the Water (Scotland) Act 1980. The 2002 Act identifies these functions as Scottish Water’s “core functions”. Section 25 of the 2002 Act grants Scottish Water additional “general powers” to:

- engage in any activity (whether in Scotland or elsewhere) which it considers is not inconsistent with the economic, efficient and effective exercise of its core functions
- do anything, whether in Scotland or elsewhere, which it considers is necessary or expedient for the purpose of or in connection with its core and general functions, including the power to
 - form or promote companies (whether alone or with others)
 - subscribe for share or loan capital of any person
 - guarantee the discharge of any obligation (whether financial or not) of any person
 - form partnerships, enter into arrangements or agreements and co-operate in any way with any person
 - enter into a contract with any person for the provision or making available of assets or services, or both (whether or not together with goods) whether by Scottish Water or by that person.

The Water Services etc. (Scotland) Act 2005 introduced competition in the retailing of water and waste water services to non-domestic premises in Scotland. Licensed providers, who must obtain a license from the Water Industry Commission for Scotland, purchase wholesale services from Scottish Water and retail them to non-domestic customers. This means that licensed providers are only responsible for billing and other customer facing services, and not the collection, treatment and distribution of water and waste water services. The 2005 Act also gave Scottish Water the power to establish a separate subsidiary, called Business Stream, which has obtained a license, inherited the customer base and competes with new entrants to supply non-domestic customers.

Section 56 of the 2002 Act requires Scottish Ministers to issue directions to Scottish Water on how to exercise its functions. The most [recent such direction](#) (Scottish Government 2009), covering the period 1 April 2010 to 31 March 2015, was issued on 27 October 2009.

OWNERSHIP

Scottish Water is a public corporation of a trading nature sponsored by the Scottish Government. A public corporation is a market body that:

- derives more than 50% of its production cost from the sale of goods or services at economically significant prices
- is controlled by central government, local government or other public corporations
- has substantial day to day operating independence so that it should be seen as an institutional unit separate from its parent department(s).

MANAGEMENT STRUCTURE

Scottish Water is managed by a 13 member board of directors. The board consists of eight non-executive members, appointed by Scottish Ministers, and five executive members. The executive members are the chief executive and the executive leadership team, which consists of an Asset Management Director, Commercial Director, Customer Service Delivery Director and Finance and Regulation Director.

Scottish Ministers are also responsible for appointing the chairman of the board.

FUNDING

Scottish Water obtains its funding from two sources, i.e. charges for services, to domestic, business and license providers, and borrowing from the Scottish Government to support capital expenditure. Full details of Scottish Water's financial affairs can be found in its [Annual Report and Accounts 2011/12](#) (Scottish Water 2012). According to the Annual Report, Scottish Water held assets worth £5477.7m, Business Stream £238.9m and Horizons £23.1m on 31 March 2012. The Scottish Water group held a net debt of £2872.6m on 31 March 2012, owing £3223.7m in Government loans and £4.1m in other loans, which are partly offset by cash holdings of £355.2m.

REGULATION OF SCOTTISH WATER

Five organisations are involved in the regulation and/or monitoring of aspects of Scottish Water's operations. These are:

[Water Industry Commission for Scotland](#): The Water Industry Commission for Scotland (WICS) is responsible for the regulation of Scottish Water. WICS has three main roles:

1. **Price Setting**: WICS sets price limits for the provision of water and waste water services by Scottish Water for five year periods, current prices were set by the [Price Review 2010-15](#) (Water Industry Commission for Scotland 2009).
2. **Monitoring Scottish Water's Performance**: WICS monitors Scottish Water's customer service – i.e. whether it meets its Guaranteed Minimum Standards and the terms of its Code of Practice, monitors Scottish Water's investment performance and ensures Scottish Water provides its customers with value for money.
3. **Managing the retail competition framework**: All retailers require to obtain a license from WICS before they can compete to supply water and waste water services to non-domestic customers.

[Scottish Public Services Ombudsman](#) (SPSO): The SPSO investigates customer complaints about water and sewerage providers operating in Scotland. The SPSO will normally only investigate a case once the complaints handling process of the provider has been exhausted. The SPSO assumed this function on 15 August 2011, following the abolition of Waterwatch Scotland under the provisions of the Public Services Reform (Scotland) Act 2012.

[Consumer Focus Scotland](#): Consumer Focus Scotland is the statutory advocate for the users of water and sewerage services in Scotland. It does not investigate individual customer complaints. Rather, it is required to engage with the key players in the Scottish water industry, which are required to take account of any views it is given. The purpose of this is to ensure that consumer interests are effectively considered by these organisations when they are taking decisions on issues such as pricing, service levels and industry standards. Consumer Focus Scotland assumed this function on 15 August 2011, following the abolition of Waterwatch Scotland under the provisions of the Public Services Reform (Scotland) Act 2010.

[Drinking Water Quality Regulator for Scotland](#): The Drinking Water Quality Regulator (DWQR) ensures that Scottish Water complies with its duties in respect of the quality of public drinking water supplies in Scotland. This is done by auditing and inspecting Scottish Water's water treatment works, operational activities and laboratories to ensure that the quality of drinking water is maintained at all times and that tests undertaken to check the quality of the water supplied are carried out accurately and reported correctly. The DWQR also supervises local authorities' enforcement of the regulations governing the quality of private water supplies in Scotland.

[Scottish Environment Protection Agency](#): The Scottish Environment Protection Agency (SEPA) regulates activities which impact on the water environment. These include many activities carried out by Scottish Water, such as discharges to groundwater, discharges to surface water and abstractions.

CONSULTATION ON THE PROPOSALS IN THE BILL

The Scottish Government ran two separate consultations on Scotland's water resources and water industry prior to the introduction of the Water Resources (Scotland) Bill. The first, [Building a Hydro Nation: A Consultation](#) (Scottish Government 2010) ran between 15 December 2010 and 9 March 2011. The second, [Scotland the Hydro Nation Prospectus and Proposals for Legislation Consultation](#) (Scottish Government 2012a) ran between 1 February 2012 and 12 March 2012.

The key points from each consultation were:

Building a Hydro Nation: This document posed 25 questions collected under a number of themes, namely:

- Establishing four key principles to guide Scottish Water's development
- Legislative and policy change to allow Scottish Water to develop renewable energy and other non-water and sewerage related functions
- Legislative and policy change to allow Scottish Water to become involved in international development, additional research and development, assume responsibility for Scotland's canals and assume additional powers in relation to flood risk management
- Changes to Scottish Water's funding arrangements
- Changes to the economic regulation of Scottish Water and possible development of an Anglo-Scottish retail market
- Introduction of drought orders and additional control on substances being introduced to the sewerage system
- Wider questions on Scotland's role in the world on water issues.

Scotland the Hydro Nation: This document set out the Scottish Government's plans to bring forward a programme under the Hydro Nation banner focused on economic development, international action and research excellence. It also included draft legislation, or suggestions for draft legislation, on the following issues.:

- Placing a duty on Scottish Ministers to develop Scotland's water resources
- Giving Scottish Ministers powers to direct certain public bodies to become involved in developments relating to Scotland's water resources
- Requiring Scottish Ministers to report to the Scottish Parliament on the above after a period of three years
- Clarifying Scottish Water's commercial powers
- Introducing a new system to deal with temporary water shortages

- Protecting drinking water from contamination at source
- Provisions to deal with the maintenance of septic tanks in multiple ownership
- Provisions dealing with procedures for handling the provision of water and sewerage services when there is a change in occupier in non-domestic property.

The Scottish Government published [Building a Hydro Nation – A Consultation: Analysis Report](#) (Scottish Government 2011) on 4 November 2011. This report provided an analysis of the 71 responses received and summarised the key points of these responses in its conclusion as follows:

In conclusion, the key messages emerging from the consultation are, Scotland should develop as a hydro nation, and while, Scottish Water has an important role to play, they should not be under a statutory obligation in relation to commercial activities, international aid or the proposed Centre of Excellence. Any new functions Scottish Water takes on should not be linked to or affect Scottish Water's core activities.

The consultation clearly demonstrated there is a resistance for water customers to pay for flood defence work. While there were spilt views around the role Scottish Water could play in canals. Scottish Water's expertise in managing large-scale projects and infrastructure was recognised and respondents thought there could be benefits in sharing this expertise both in relation to canals and flood defences. There was a clear view Scottish Water's role in relation to SUDS¹ could be enhanced.

It was agreed there were areas in the current legislation that could be modernised, particularly in relation to drought.

The Scottish Government has published the [responses](#) (Scottish Government 2012b) to the Scotland the Hydro Nation consultation without any analysis. However, the Policy Memorandum summarises the key points raised in the responses as follows:

There was strong support for the vision set out in the document, the importance of the water resource to Scotland's continuing prosperity, and the key proposal of developing the value of Scotland's water resources. Consultees supported the continuation of Scottish Water in the public sector. Crucially, that support was tempered with a consistent view that delivery of Scottish Water's core functions should not be compromised by new responsibilities in legislation or through the pursuit of the Hydro Nation agenda. Customers in Scotland should be protected from any financial risk and suffer no fall in quality of service as a result of the broadening agenda. The Prospectus set out that protecting core functions remains as a principle and that was clearly supported.

In addition, the concept of value in relation to Scotland's water resources and assets attracted comment from stakeholders. While the pursuit of economic value was clearly supported, maximising social and environmental value was also seen as a key priority by consultees. Consultees considered it important to ensure that in building a Hydro Nation, Scotland ensures that sustainable development is central to the programme, and that customer interests remain a priority.

CONTROLLED ACTIVITIES REGULATIONS

¹ SUDS – Sustainable Urban Drainage System. SUDS are drainage facilities and practices that are more environmentally friendly than traditional drainage systems

Sections 7, 10, 19, 31, 34, 38 and 46 of the Water Resources (Scotland) Bill make reference to the Controlled Activities Regulations (CAR). The Water Environment (Controlled Activities) (Scotland) Regulations 2011 require anyone wishing to undertake the following activities (subject to certain thresholds) to obtain authorisation from the Scottish Environment Protection Agency (SEPA) prior to undertaking the works:

- any activity liable to cause pollution of the water environment, including discharges of polluting matter and disposal of waste sheep dip and waste pesticides
- abstraction of water from the water environment
- construction, alteration or operation of impounding works (e.g. dams and weirs) in surface water or wetlands
- carrying out building or engineering works (a) in inland water⁶ (other than groundwater) or wetlands; or (b) in the vicinity of inland water or wetlands and having or likely to have a significant adverse effect on the water environment
- artificial recharge or augmentation of groundwater
- the direct or indirect discharge, and any activity likely to cause a direct or indirect discharge, into groundwater of any hazardous substance or other pollutant
- any other activity which directly or indirectly has or is likely to have a significant adverse impact on the water environment.

SEPA provides a full explanation of the CAR regime in [The Water Environment \(Controlled Activities\) \(Scotland\) Regulations 2011: A Practical Guide](#) (Scottish Environment Protection Agency 2011).

PROPOSALS IN THE BILL

The Water Resources (Scotland) Bill is divided into eight parts and has three accompanying schedules. A detailed section by section description of the contents of the Bill is available in the explanatory notes. This section provides brief details of the key features of each part and schedule.

Part 1: Development of Water Resources: This part places a duty on Scottish Ministers to “take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland’s water resources”. This duty must be exercised in a manner which contributes to the sustainable development of resources and in a manner which is consistent with the Climate Change (Scotland) Act 2009 and the Water Environment and Water Services (Scotland) Act 2003.

This part also gives Scottish Ministers the power to direct a “designated body”, following consultation with that body, to participate in any development as described above. Designated bodies identified in the Bill are:

- Scottish Water
- Scottish Environment Protection Agency
- Scottish Natural Heritage
- Scottish Enterprise
- Highlands and Islands Enterprise

Scottish Ministers may, by regulation, add or remove bodies from this list. Scottish Ministers are required to lay a report on how they have fulfilled this duty after a three year “reporting period”.

Part 2: Control of Water Abstraction: This part requires anyone wishing to abstract water from bodies of surface water or groundwater within Scotland at a rate above 10 megalitres per

day, or other amount specified in regulations, to obtain approval from Scottish Ministers. The Bill specifies the following exemptions from this requirement to obtain approval, these are:

- If, on the day on which this power comes into force, the abstraction has been approved under the Controlled Activities Regulations
- The abstraction is being carried out by Scottish water solely, or principally, in the exercise of its core functions in relation to premises in Scotland
- The abstraction is for the sole or principal purpose of generating electricity by hydro-power, irrigating agricultural/horticultural land, operating a fish farm, quarry or coal mine.

Scottish Ministers can amend these exemptions by regulation.

This part allows Scottish Ministers to make regulations setting out the application process for approval of water abstraction, sets out what factors Scottish Ministers can consider in reaching a decision, allows Scottish Ministers to attach conditions to any approval and allows Scottish Ministers to seek advice from other bodies when considering applications. This part also allows Scottish Ministers to suspend or revoke any approval and sets out an appeal mechanism for applicants unhappy with any decision taken by Scottish Ministers under this part. Scottish Ministers may also make regulations regarding the monitoring of abstractions and requirements for record keeping in relation to water abstractions. It also makes it an offence to abstract water without approval or to contravene any condition attached to a water abstraction approval.

Part 3: Scottish Water's Functions: This part amends the Water Industry (Scotland) Act 2002 to allow Scottish Water to do anything which it considers will assist in the development of the value of Scotland's water resources. It also bestows on Scottish Water the additional functions to:

- Take reasonable steps to develop its property, rights, other assets and expertise,
- Take reasonable steps to promote the use of its assets for the generation of renewable energy

Scottish Water must only exercise these additional functions in a manner which is consistent with the economic, efficient and effective exercise of its core functions. The Bill amends Scottish Water's core functions so that they are defined as the functions established under the Sewerage (Scotland) Act 1968, the Water (Scotland) Act 1980 and any other Act as it relates to the provision of water and sewerage services in Scotland.

The 2002 Act and Water Services etc. (Scotland) Act 2005 is amended to allow Scottish Ministers to lend money directly to subsidiaries of Scottish Water and for these subsidiaries to borrow from other sources. The total amount that can be borrowed by Scottish Water and its subsidiaries cannot exceed the amount set out in the annual Budget (Scotland) Act.

Part 4: Raw Water Quality: The Water (Scotland) Act 1980 is amended to allow "approved persons", i.e. a person authorised by Scottish Water to act on its behalf, to enter premises at a reasonable time for the purposes of assessing or monitoring the quality of raw water (i.e. untreated water) contained in a body of water identified in an order made under the 1980 Act or the Water Environment and Water Services (Scotland) Act 2003. This power can be used to allow investigation and isolation of anything that appears to be affecting, or may affect, the quality of the raw water. This part makes it an offence to intentionally obstruct an approved person in carrying out their duties. This part also allows Scottish Water to enter into agreements with the owners or occupiers of land with a view to the owner/occupier taking action or ceasing activities with a view to preventing the deterioration of raw water quality or removing/reducing the need to treat that water.

Part 5: Non-domestic services: This part establishes that “deemed contracts” exist between water and sewerage services providers and the occupier of premises where no written contract currently exists. The terms and conditions of these contracts are to be established by the Water Industry Commission for Scotland. This part also places a duty on the owners of commercial property to inform the water and sewerage provider when there is a change in tenant or when the property falls vacant. Any property owner which fails to do this would be jointly liable for any water and/or sewerage bills incurred by any new occupier.

Part 6: Sewerage Network: This part allows Scottish Water to impose a condition on any consent for a trade effluent notice, i.e. consent for discharging effluent from commercial premises into the public sewer system, with the aim of “the elimination from or diminution in any trade effluent of any priority substance or pollutant”, i.e. reducing or removing the release of pollutants into the sewer system. The definitions of “pollutant” and “priority substance” are set out in other Regulations.

This part also amends the maximum penalty for passing substances into the public sewer which could damage or block the sewer system, affect the sewerage treatment system or damage health. It also introduces a new offence of passing fat, oil or grease into the public sewer system which interferes with, or is likely to interfere with, the free flow of the sewer or adversely affects, or is likely to, the sewage treatment and disposal process. In addition, Scottish Water may reclaim the costs incurred in investigating, unblocking or repairing any sewer from the owners of commercial premises that allows any fat, oil or grease to be poured into the sewer. Scottish Water’s power of entry are amended to allow for the installation of sampling and testing equipment, for monitoring, inspecting and testing and expanded to cover investigating the source of any non-sewage matter being passed into public sewers and associated systems.

This part introduces a new system for the maintenance of private sewage treatment works, including most septic tanks, that are owned by two or more people and the discharge of their contents is subject to authorisation under the Controlled Activities Regulations. This system will allow any person(s) to take measures that they consider necessary to ensure the works are properly maintained by issuing a notice on all the other owners setting out the sewage treatment works to be undertaken and the cost of the works. The measures set out in the notice can only be carried out after a 28 day period beginning on the day the notice is served. A notice is valid for 12 months from the date it is issued and works can be carried out without the agreement of any or all of the other owners. Anyone receiving such a notice will be able to ask for it to be reviewed by a Sheriff. The Sheriff may uphold, amend or quash the notice. The Sheriff’s decision is final.

Part 7: Water Shortage Orders: Scottish Water may request that Scottish Ministers make a water shortage order if it believes that there is a serious deficiency of water supplies in an area or there is a threat of a serious deficiency. The request will set out details of the deficiency, the steps Scottish Water has taken to abate the deficiency, the steps Scottish Water intends to take (other than those set out in the order) and how these will help abate the deficiency and details of any communication with those likely to be affected by the order. The order can contain any provisions which Scottish Ministers consider necessary to abate a serious deficiency of water supplies in an area or a threat of such a deficiency, including the power to abstract water when it would not normally be able to do so. It is an offence for a person, without reasonable excuse, to fail to comply with the terms of a water saving order.

Scottish Ministers will have the power to give directions to Scottish Water on the exercise of its functions under a water shortage order.

Anyone aggrieved by a water shortage order may appeal to a Sheriff against the making of the order or the terms of the order. The Sheriff may suspend the effect of any part of the order

pending determination of the appeal. The Sheriff may choose to affirm the order, direct Scottish Ministers to amend or revoke the order in whole or in part. The Sheriff's decision is final, apart from on a point of law.

If Scottish Water believes that there is a threat of a serious deficiency of water supplies in an area then it must publicise information about the threat in that area along with recommendations on water saving actions it considers will assist in abating that threat.

Part 8: General Provisions: This part gives Scottish Ministers powers to "...make such supplemental, incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in connection with the Act". It also includes key definitions and the short title of the Bill.

Schedule 1: This schedule provides detail of the development, approval and operation of the water shortage order system.

Schedule 2: This schedule sets out a list of water saving measures.

Schedule 3: This schedule sets out a list of enactments to be repealed.

FINANCIAL IMPLICATIONS OF THE PROPOSALS IN THE BILL

The Financial Memorandum that accompanies the Bill identifies the following direct costs as arising from the proposals in the Bill:

- **Scottish Government:** Staffing and administration costs of £115,000 per year
- **Local authorities:** No direct costs
- **Scottish Water:** Scottish Water will invest £44m in support of its additional functions, primarily in renewable energy, over the next three years. Scottish Water will spend between £50,000 and £200,000 monitoring water quality in each catchment area. Scottish Water has budgeted to spend £1.2m per year entering into agreements with landowners within seven catchments in the period to 2015. Costs on Scottish Water of undertaking pro-active catchment inspection and advisory/enforcement work with dischargers to the network are estimated to be in the region of £1m per annum
- **Other Bodies:** The costs for applying for water abstraction consent will be established in Regulations. Costs on landlords for new duties to inform water suppliers on changes in tenancy are estimated at between £90,000 and £250,000 per year. Costs on business of meeting tighter controls on trade effluent discharge have not been estimated. The impact of Water Shortage Orders assumed to have no financial impact.

VIEWS ON THE PROPOSAL IN THE BILL

The Infrastructure and Capital Investment Committee issued a call for views on the Bill on 6 July 2012, with a closing date for submissions of 3 September 2012. The Committee had received 23 responses from a broad range of companies, organisations and individuals by 6 September 2012. The responses are published on the Infrastructure and Capital Investment Committee's [web pages](#).

Generally, comments were supportive of the proposals in the Bill. However, a number of concerns were highlighted by either several respondents or individual key water industry stakeholders. These are briefly outlined below:

Part 1: Development of Water Resources: Consumer Focus argued that the benefits of the proposals in the Bill to consumers were unclear and asked that these be better explained.

Several respondents, e.g. SEPA, RSPB, Consumer Focus and Centre for Water Law, Policy and Science, argued that the Bill should be amended to specifically require Scottish Ministers to develop Scotland's water resources in a manner that furthers environmental and social aims. These respondents also raised concerns that it was not clear whether reference to "the value" of Scotland's water resources relates simply to economic matters or wider issues.

Several respondents, e.g. the Centre for Water Law, Policy and Science, have asked for clarification as to whether the requirement on Ministers to report on the exercise of their powers under the Bill after three year period is a one-off or a continuing requirement.

Part 2: Control of Water Abstraction: Several witnesses, e.g. SSE, raised concerns about the lack of consultation on the water abstraction proposals in the Bill and what the policy intention is in introducing a new regime, with Scottish Land and Estates arguing that the proposals run counter to the Government's policy on reducing bureaucracy and regulation. The Centre for Water Law, Policy and Science raised concerns about how the proposed authorisation scheme would integrate with the current controlled activities regulations and that much of the detail of the operation of the scheme was left to Regulations. The Scotch Whisky association is concerned about the potential impact of these proposals on the industry and states "Scotch Whisky is a significant current key water user and we ask for our industry to be considered for an exemption, along with the other organisations that are currently exempt and classed as key to Scotland (Scottish Water, agriculture and Hydro power electricity generators)." Several witnesses, e.g. RSPB, argue that the 10 megalitres threshold is an arbitrary one, while SCDI argue that the threshold should be based on consumption rather than abstraction.

Part 3: Scottish Water's Functions: SEPA raised concern over the possibility that directions from Scottish Ministers could possibly compromise its ability to carry out its core functions. Consumer Focus again asked for a broader definition of "value" to include social and environmental concerns.

JR and M Cuthbert argue in written evidence that Scottish Water's past actions, particularly in launching joint ventures with private sector operators, have had a negative effect on Scotland's economy and are concerned that the provisions in Part 3 of the Bill may exacerbate this. The Scottish Environmental Services Association raised concerns about the expansion of non-core Scottish Water services on the private sector, stating "we are greatly concerned by recent Scottish Water activity – and provisions in the Bill – which directly undermine our industry's current and future investment in delivering the objectives of the Zero Waste Plan. For Scottish Water to press ahead with further investment in new facilities while the commercial case for such infrastructure remains unproven seems irresponsible given current pressures on public bodies' expenditure and public accountability."

Both the Drinking Water Quality Regulator and Consumer Focus argue that Scottish Water must ensure that the interests of consumers are protected, especially the financial interests of less well-off customers, when Scottish Water is undertaking non-core functions.

Part 4: Raw Water Quality: Scottish Land and Estate oppose giving Scottish Water new powers of entry to land, arguing that Scottish Water should work in partnership with landowners instead.

The Centre for Water Law, Policy and Science stated that "It is arguable that SEPA is better placed than Scottish Water to carry out monitoring of raw water quality and that if further monitoring is required, that SEPA should have additional resources here."

Part 5: Non-Domestic Services: The proposals in Part 5 of the Bill have attracted very little comment from respondents, although they are welcomed by Business Stream.

Part 6: Sewerage Network: SEPA argued that powers relating to waste water treatment works should have gone further and allowed Scottish Water to take action without the involvement of any owners and allow them to recover the costs incurred. Highland Council also called for the Bill to go further and "...support the replacement of poorly performing septic tanks with other private facilities that have greater capacity to accommodate any future development allocated in a Development Plan."

Part 7: Water Shortage Orders: Consumer Focus asked for the wording of the Bill to be altered to ensure that the impact of a water shortage order falls equally on domestic and non-domestic customers. The Scotch Whisky Association raised concerns about the impact of water saving measures on the industry, stating "We would hope any of the mandatory water saving measures would take cognisance of other legislative requirements e.g. Food Hygiene and we would like to propose the Bill should include an exemption for activities which ensure compliance with Hygiene and / or H&S legislation."

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