



The Scottish Parliament
Pàrlamaid na h-Alba

Subordinate Legislation Committee

13th Report, 2013 (Session 4)

Water Resources (Scotland) Bill as amended at stage 2

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Subordinate Legislation Committee

Remit and membership

Remit:

The remit of the Subordinate Legislation Committee is to consider and report on—

- (a)
 - (i) subordinate legislation laid before the Parliament;
 - (ii) any Scottish Statutory Instrument not laid before the Parliament but classed as general according to its subject matter;

and, in particular, to determine whether the attention of Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(Standing Orders of the Scottish Parliament, Rule 6.11)

Membership:

Nigel Don (Convener)
Jim Eadie
Mike MacKenzie
Hanzala Malik
John Pentland
John Scott
Stewart Stevenson (Deputy Convener)

Committee Clerking Team:

Clerk to the Committee

Euan Donald

Assistant Clerk
Elizabeth White

Support Manager
Daren Pratt



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13th Report, 2013 (Session 4)

Water Resources (Scotland) Bill as amended at stage 2

The Committee reports to the Parliament as follows—

1. At its meeting on 19 February 2013, the Subordinate Legislation Committee considered the delegated powers provisions in the Water Resources (Scotland) Bill¹, as amended at Stage 2. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.
2. This Bill contains a range of measures which generally pursue the aim of enhancing the manner in which Scotland utilises its water resources by encouraging the sustainable development of their value and responsible use.
3. The Scottish Government has provided a supplementary delegated powers memorandum² (SDPM) setting out the need for the powers as amended, how they may be exercised and the choice of procedure applicable to their exercise.

Delegated Powers Provisions

4. At Stage 1 of the Bill, the Committee reported that it did not need to draw the attention of the Parliament to the powers in the following sections 3(2), 7(6), 8(1)(b) and (2), 9(2), 12(1)(b), 16(1) and (2), 26 (substituting new section 14(2) into the Water Services etc. (Scotland) Act 2005), 27 (inserting new section 76R(1) into the Water (Scotland) Act 1980) and 30 (inserting new sections 20C(4) and 20D(4) into the Water Services etc. (Scotland) Act 2005), Section 49 (ancillary regulations) and Section 51 (commencement).
5. At stage 2, a number of the delegated powers have been amended and two new powers have been added. The Committee's consideration of these powers is detailed below.

¹ Water Resources (Scotland) Bill, as amended, available here:
[http://www.scottish.parliament.uk/S4_Bills/Water%20Resources%20\(Scotland\)%20Bill/b15as4-amend.pdf](http://www.scottish.parliament.uk/S4_Bills/Water%20Resources%20(Scotland)%20Bill/b15as4-amend.pdf)

² Water Resources (Scotland) Bill Supplementary Delegated Powers Memorandum available here:
http://www.scottish.parliament.uk/S4_Bills/Water_Resources_SDPM_Final.pdf

Section 3(2) – designation of bodies

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by SSI
Parliamentary procedure: negative procedure

6. Section 2 allows the Scottish Ministers to give “designated bodies” directions as to the exercise of the body’s functions in order to contribute to the delivery of the development duty. The designated bodies are listed in section 3(1). Section 3(2) has been extended at stage 2 to allow the Scottish Ministers to update an existing entry. Before exercising their power to do so Ministers must consult a body affected by the proposed change.

7. The Committee is content that the change to the power is not significant and considers that the power remains appropriate in principle and that the negative procedure is an appropriate level of scrutiny.

Section 8(1)(b) and (2) – relevant threshold

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by SSI
Parliamentary procedure: affirmative procedure

8. Qualifying abstractions are identified by reference to “the relevant threshold”. Section 8(1)(a) states that the initial relevant threshold is 10 megalitres of water per day. Section 8(1)(b) allows the Scottish Ministers to set a different rate as the relevant threshold. Section 8(2) allows the Scottish Ministers to prescribe a method of how the relevant threshold is to be calculated, including the ability to leave an amount of water out of account.

9. The power has been amended slightly. Ministers may make provision for all or some of an amount of water abstracted to be left out of account for the purpose of calculating the threshold *in specified circumstances*.

10. The Committee is content with the power as amended and that it remains subject to the affirmative procedure.

Section 9(2) – application for approval

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by SSI
Parliamentary procedure: negative procedure

11. At introduction section 9(2) permitted the Scottish Ministers to make provision about the procedure for an application for approval of a qualifying abstraction. The power has been amended to make its exercise mandatory rather than permissive. The SDPM explains that making such regulations mandatory will give added

comfort to potential applicants that the details of the application process will be set out in due course.

12. The Committee is content with the power as amended and that the power remains subject to the negative procedure.

Section 14(1)(c) – grounds for suspension and revocation

Power conferred on:	the Scottish Ministers
Power exercisable by:	regulations made by SSI
Parliamentary procedure:	affirmative procedure

13. Section 14 gives the Scottish Ministers the power to suspend or revoke an approval for large scale water abstraction. Various grounds on which they may do so are set out in section 14. Section 14(1)(b) allows the Scottish Ministers to prescribe other circumstances in which they may suspend or revoke an approval. Regulations which do so were subject to the negative procedure in the Bill as introduced. The Committee was not content with this at stage 1 and recommended that the power should be subject to the affirmative procedure. The Scottish Government has accepted the Committee's recommendation that the power should be subject to affirmative procedure.

14. The Committee is content with the power as amended.

Section 26A – Errors in metering

Power conferred on:	the Scottish Ministers
Power exercisable by:	regulations made by SSI
Parliamentary procedure:	negative procedure

15. Section 26A was added at stage 2. It amends section 54 of the Water (Scotland) Act 1980 which makes provision about water meter accuracy. The current tolerance for accuracy stated in that Act is 5%. The Bill proposes to change this tolerance to the "relevant percentage" which is to be 2.5% in the case of a high flow rate and 6% in the case of a low flow rate. The section gives the Scottish Ministers the power to define what high flow rate and low flow rate means and also to amend the relevant percentage.

16. The Committee is content with the power to modify provisions relating to water meter accuracy and that the power is subject to the negative procedure.

Section 27 – Steps in relation to water quality

Power conferred on:	the Scottish Ministers
Power exercisable by:	order made by SSI
Parliamentary procedure:	negative procedure

17. Section 27 inserts a new part VIB into the Water (Scotland) Act 1980 which gives Scottish Water certain powers of entry into premises for the purposes of

assessing or monitoring the quality of “raw water” and investigating anything that may be affecting its quality. At stage 2 section 27 was amended to insert a new section 76M(6) into the 1980 Act. This excludes from the definition of “raw water” water used or available as or for a private water supply, within such meaning as the Scottish Ministers prescribe.

18. The Committee is content with the power to specify private water supplies excluded from the definition of raw water and that the power is subject to the negative procedure.

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