

# LEGISLATIVE CONSENT MEMORANDUM

## WATER BILL

### Draft Legislative Consent Motion

1. The draft motion, which will be lodged by the Deputy First Minister is:

“That the Parliament agrees that the relevant provisions of the Water Bill, introduced in the House of Commons on 27 June 2013, relating to the treatment of applications for a water supply or sewerage services licence or in connection with safeguarding the movement of fish through the border River Esk, so far as these matters fall within the legislative competence of the Scottish Parliament or alter the executive competence of Scottish Ministers, should be considered by the UK Parliament.”

### Background

2. This memorandum has been lodged by Nicola Sturgeon, Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities under Rule 9.B.3.1(a) of the Parliament’s standing orders. The Water Bill was introduced in the House of Commons on 27 June 2013. The latest version of the Bill can be found at: <http://services.parliament.uk/bills/2013-14/water.html>.

### Content of the Water Bill

3. The purpose of the Bill is to make provision:

- about the water industry;
- about compensation for modification of licences to abstract water;
- about main river maps;
- about records of waterworks;
- for the regulation of the water environment;
- about the provision of flood insurance for household premises;
- about internal drainage boards;
- about Regional Flood and Coastal Committees; and
- for connected purposes.

4. In particular, Part 1 of the Bill amends the Water Industry Act 1991 (“the WIA”) by expanding and revising, for England and Wales only, the current Water Supply Licensing (WSL) regime and adding a sewerage licensing regime. It also offers the prospect of increased choice in the retail market by enabling earlier repeal of the threshold which sets the water usage limit for when non-household customers can switch supplier. These provisions would allow all business, charity and public sector customers to choose both their water and sewerage supplier for the first time in England and Wales (this choice already exists in Scotland).

### Provisions of the Bill which relate to Scotland

5. To facilitate a cross-border retail market between England and Wales and Scotland, provisions in clause 7 confer an order-making power on the Scottish Ministers to make provision in Scotland about treating applications for a water supply or sewerage services licence in England and Wales as also being an application for a

corresponding licence in Scotland. The conferral of this power falls within the legislative competence of the Scottish Parliament and therefore requires the legislative consent of the Scottish Parliament.

6. Linked to this power of the Scottish Ministers, provisions in clause 6 require a regulator receiving any such application in England and Wales (OfWat) to forward (at the request of the applicant) a copy to the regulator in Scotland (the Water Industry Commission for Scotland) for the purposes of the licensing regime here. Although this duty is imposed to enable the regulator in Scotland to receive applications here (and is therefore linked to a devolved purpose), the provision extends to England and Wales only (clause 55(4)) and is therefore reserved.

7. Other provisions in clause 6 confer a regulation-making power on the Secretary of State which mirrors the power conferred on the Scottish Ministers by provisions in clause 7. This mirror power extends to England and Wales only (clause 55(4)) and is therefore reserved.

8. Linked to this power of the Secretary of State, provisions in clause 7 require the regulator (the Water Industry Commission for Scotland) receiving any such application in Scotland to forward (at the request of the applicant) a copy of the application to the regulator in England and Wales for the purposes of the licensing regime there. Although this duty extends to Scotland, it relates to the reserved purpose of enabling the regulator in England and Wales to process applications for the purposes of the licensing regime there.

9. The Scottish Government welcomes the UK Government's intention to take a similar approach to retail competition for non-domestic water customers as the one already in place in Scotland and have agreed a joint objective of creating a seamless Scottish-English retail market. The Bill facilitates this by enabling provision to be made so that where a new entrant applies for a licence in England and Wales, it can also be treated as an application for the equivalent licence in Scotland (and vice versa). This will benefit both Scottish and English customers.

10. Part 3 (with Schedule 8) confers a regulation-making power on the Secretary of State which includes a power to make provision about safeguarding the movement of fish through the Scottish part of the Border River Esk (in addition to the England part). Notwithstanding the arrangements which are in place by virtue of section 111 of the Scotland Act 1998, provision about safeguarding the movement of fish through the Scottish part of the Border River Esk is a devolved matter. The power of the Secretary of State to make regulations under clause 44 containing any such provision is therefore subject to the consent of the Scottish Ministers.

11. Part 4 (flood insurance) extends to Scotland. This Part confers a regulation-making power on the Secretary of State to make provision in connection with the provision by insurance companies of insurance cover against the risk of loss of or damage to premises due to flood. This relates to a reserved matter.

12. In Part 5, section 51 gives effect to paragraph 12 of Schedule 10 which amends section 166(3) of the Water Resources Act 1991. Since section 166(3) of that Act extends to Scotland, the amendment also extends to Scotland (clause 55(4)). The amendment is however consequential on provision made under section 22

(establishment of regional flood and coastal committees) of the Flood and Water Management Act 2010. This amendment therefore relates to a reserved matter.

13. Part 6 (general) also extends to Scotland. This Part confers a power on the Secretary of State to make provision in consequence of the Bill, including transitional, transitory or saving provision (clause 52), and also standalone powers to commence relevant provisions (clause 56) and to make transitional, transitory or saving provision in connection with the coming into force of any provision of the Bill (clause 53). In addition, clause 56(7) confers a power on the Scottish Ministers to commence clause 7 (which amends the Water Services etc. (Scotland) Act 2005).

### **Reasons for seeking a legislative consent motion**

14. The following clauses of the Bill make provision which falls within the legislative competence of the Scottish Parliament or alters the executive competence of Scottish Ministers and therefore requires the legislative consent of the Parliament:

- the conferral of a power on the Scottish Ministers to make provision about treating an application for a water supply or sewerage licence in England and Wales as also being an application for a corresponding licence in Scotland (clause 7 - arrangements with the Water Industry Commission for Scotland),
- the conferral of a power on the Secretary of State in so far as it enables provision to be made, subject to the consent of the Scottish Ministers, about safeguarding the movement of fish through the Scottish part of the Border River Esk (Part 3 and Schedule 8 - regulation of the water environment),
- the conferral of a power on the Scottish Ministers to consent to the making of regulations under clause 44 so far as the regulations contain provision about safeguarding the movement of fish through the Scottish part of the Border River Esk (clause 44(7)), and
- the conferral of a power on the Scottish Ministers to commence, by order, clause 7 (clause 56(5) - commencement).

15. The power conferred by clause 7 is closely associated with other provisions in Part 1 of the Bill. Given the mutuality of the provisions, the Scottish Ministers feel it is appropriate in the circumstances to use the vehicle of the UK Bill.

16. The powers conferred by Part 3 (with Schedule 8) will enable existing provision which safeguards the movement of fish through the Scottish part of the Border River Esk to be incorporated within the wider environmental permitting regime which applies in England and Wales. In the case of the Border River Esk provisions, these essentially seek to preserve the current powers of the Environment Agency in relation to the Esk. The purpose behind the regime is to simplify the permitting regime and to make it easier to apply for the necessary permits rather than seeking out separate authority where rules on fish passage will apply.

### **Consultation**

17. The Water Bill gives effect to the proposals in the Defra White Paper "Water for Life" which was published for pre-legislative scrutiny in December 2011.

## **Financial Implications**

18. Agreeing to the Legislative Consent Motion will result in the implementation of provisions which are administratively simpler and avoid duplication of paperwork, thus generating savings for customers.

## **Conclusion**

19. It is the view of the Scottish Government that it is in the interests of Scottish businesses, Scotland's water environment and resources, and general good governance that the relevant provisions as outlined above matters which fall within the legislative competence of the Scottish Parliament or alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament.

**Scottish Government**

September 2013