

# **WATER RESOURCES (SCOTLAND) BILL**

---

## **EXPLANATORY NOTES**

### **(AND OTHER ACCOMPANYING DOCUMENTS)**

#### **CONTENTS**

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Water Resources (Scotland) Bill introduced in the Scottish Parliament on 27 June 2012:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 15–PM.

## **EXPLANATORY NOTES**

### **INTRODUCTION**

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **THE BILL – OVERVIEW**

4. This Bill takes forward the Scottish Government's wish to ensure that Scotland makes every effort to utilise fully its abundant water resources. The Government has set out its vision of Scotland as a Hydro Nation – the first such nation in the world – a nation that manages its water environment to the best advantage, employing its knowledge and expertise effectively at home and internationally. It is developing a wide ranging programme of work to achieve this vision – the Hydro Nation agenda.

5. The Bill makes provision in relation to Scotland's water resources. It provides for the Scottish Ministers and Scottish Water to further the sustainable development of the value of Scotland's water resources, and for Ministers to control large-scale abstractions from the water environment. It places new duties upon Scottish Water to develop its assets and support renewable energy, and allows its subsidiaries to borrow money directly, rather than through Scottish Water. It gives Scottish Water powers to monitor and manage the quality of water in the water environment that is likely to be used for human consumption. It provides a new mechanism for Scottish Water to deal with temporary shortages of water supplies, replacing the system of drought orders under the Natural Heritage (Scotland) Act 1991 with a new system of water shortage orders. It also allows Scottish Water to protect the public sewerage network from certain substances and facilitates the maintenance of communal private sewage treatment works, as well as making minor changes to the functioning of the retail market for non-domestic water and sewerage services. It also repeals section 26 of the Water Environment and Water Services (Scotland) Act 2003.

6. The Bill is in eight Parts:

- Part 1 places a general duty on the 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. It provides for Ministers to direct designated public bodies as to their involvement in this development. It places a requirement on Ministers to report to the Scottish Parliament on the fulfilment of the duty.
- Part 2 provides for the Scottish Ministers to control large-scale water abstractions. It does so by prohibiting abstractions from the water environment that are above the specified threshold rate, unless they are exempt or are approved by the Scottish Ministers.

- Part 3 amends the Water Industry (Scotland) Act 2002 to alter Scottish Water’s powers and duties. It clarifies that Scottish Water has the power to do anything that it considers will assist in the development of the value of Scotland’s water resources and places a duty on Scottish Water to develop the value of its assets and expertise, and to promote the use of its assets for the generation of renewable energy. Provision is also made for the Scottish Ministers to give grants or to lend directly to subsidiaries of Scottish Water, and for the water and sewerage undertaking established by Scottish Water to be able to borrow from the Scottish Ministers or any other person.
- Part 4 gives Scottish Water certain additional powers of entry for the purpose of monitoring the quality of “raw water” in the water environment that may be used for human consumption and for the purpose of investigating anything that may be affecting the quality of such water. It also allows Scottish Water to enter into agreements with owners and occupiers of land, as well as with local authorities, for the carrying out of activities for the purpose of improving the quality of any such raw water.
- Part 5 provides for deemed contracts for water and sewerage services in certain circumstances and requires the owners of commercial properties to notify licensed providers of water and sewerage services of changes in the occupancy of the premises.
- Part 6 allows Scottish Water to control inputs of certain priority substances and pollutants into the sewerage network through trade effluent consents, prohibits the input of fats, oils and grease into the public sewer, and gives Scottish Water improved monitoring powers in relation to inputs into sewers. It also makes provision for common owners of private sewage treatment systems such as septic tanks to be able to carry out essential maintenance without the consent of all their co-owners in certain circumstances.
- Part 7 makes provision for the management of temporary water shortages. It allows Scottish Water to apply for, and the Scottish Ministers to make, water shortage orders. These orders may, among other things, authorise Scottish Water to abstract water from or discharge it to any place, relax requirements to which Scottish Water is subject, and impose water saving measures.
- Part 8 contains general provisions such as key definitions and repeals.

## **THE BILL – SECTION BY SECTION**

### **PART 1 – DEVELOPMENT OF WATER RESOURCES**

#### **Section 1 – Duty of the Scottish Ministers**

7. This section places a duty upon the 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. Value in this context means not only economic value but other benefits such as social or environmental benefits. The steps that Ministers take must be designed to contribute to the sustainable use of Scotland’s water resources.

8. Ministers are to act so far as is consistent with the proper exercise of their functions under the Water Environment and Water Services (Scotland) Act 2003 (which concerns protection of the water environment) and the Climate Change (Scotland) Act 2009 (which concerns the reduction of greenhouse gas emissions) and any other functions (whether or not relating to water resources or environmental matters).

9. By Scotland's water resources is meant wetland, inland water and transitional water as those terms are defined by section 3 of the Water Environment and Water Services (Scotland) Act 2003. Broadly, this means all standing or flowing water on the surface of the land and all groundwater, and includes partly saline water in the vicinity of river mouths.

### **Section 2 – Involvement of public bodies**

10. This section enables the Scottish Ministers to give the bodies listed in section 3(1) directions as to the exercise of their functions for the purpose of securing their participation in the development of the value of Scotland's water resources. Ministers must consult each body which will be subject to the directions before they are made.

### **Section 3 – Designation of bodies**

11. This section lists the bodies to which Ministers may issue directions for the purpose of securing their participation in the development of the value of Scotland's water resources. Ministers may alter the list by regulations, after consultation with each body to which the alteration relates.

### **Section 4 – Reporting after 3 years**

12. This section requires the Scottish Ministers to report to the Scottish Parliament after 3 years from the date on which section 1 comes into force on how they have complied with their duty to take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland's water resources.

## **PART 2 – CONTROL OF WATER ABSTRACTION**

### **Section 5 – Qualifying abstraction**

13. Part 2 of the Bill establishes a requirement for Ministerial approval for abstractions from the water environment in Scotland that are above the specified rate threshold, and are not exempt under section 7.

14. Section 5 sets out the abstractions to which the provisions of Part 2 apply ("qualifying abstractions"). The requirement for Ministerial approval applies to an abstraction from any body of inland water in Scotland that is above the threshold rate set in section 8.

15. Inland water is defined by the Water Environment and Water Services (Scotland) Act 2003 as all standing or flowing water on the surface of the land (other than partly saline water in the vicinity of river mouths) and all groundwater within the landward limits of coastal water.

## **Section 6 – Prohibition arising**

16. This section prohibits abstractions from inland water in Scotland above the specified threshold rate that are not approved by the Scottish Ministers or exempt from the requirement for their approval under section 7.

## **Section 7 – Exemption from approval**

17. This section sets out which abstractions are exempt from the requirement for Ministerial approval. The following abstractions are exempt:

- abstractions authorised under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209) on the day on which section 7(1) comes into force;
- abstractions by Scottish Water for the purpose of the exercise of its core functions (see section 70(2) of the Water Industry (Scotland) Act 2002, as amended by section 24 of the Bill) in relation to premises in Scotland; and
- abstractions for the purposes listed in subsection (4). Those purposes are generating electricity by hydro-power, irrigating agricultural or horticultural land and operating a fish farm or a quarry or mine.

18. Ministers may by regulations modify an exemption, or provide for an exemption in other circumstances.

## **Section 8 – The relevant threshold**

19. This section sets out the rate threshold above which abstractions from inland water in Scotland are subject (unless otherwise exempt) to the approval of the Scottish Ministers. The rate threshold is 10 megalitres per day, although Ministers may alter that threshold in future by regulations. One megalitre contains one million litres.

20. Ministers may by regulations provide for a different rate of abstraction, or for a method of calculation of the rate of abstraction.

## **Section 9 – Application for approval**

21. This section provides that any person may apply to the Scottish Ministers for approval of a qualifying abstraction. The details of the procedure for making such an application may be set out by the Scottish Ministers in regulations.

## **Section 10 – Factors as to approval**

22. This section sets out the factors to which the Scottish Ministers are to have regard when deciding whether to approve a qualifying abstraction. In contrast to the determination by SEPA of applications for the authorisation of abstractions under regulation 15 of the Water Environment (Controlled Activities) (Scotland) Regulations (S.S.I. 2011/209), which focuses on mitigating any adverse impacts on the water environment, Ministers can consider a broad range

of social, economic and other benefits and impacts when considering whether to approve a proposed abstraction. Ministers are required to give their reasons for not approving an application.

### **Section 11 – Conditions of approval**

23. This section allows the Scottish Ministers to attach conditions to their approval, and vary such conditions. Conditions may, in particular, impose an upper limit on the rate at which water may be abstracted, and restrict the purposes for which the abstracted water may be used. The section also provides that the holder of an approval cannot transfer it to another person without the Scottish Ministers' prior consent.

### **Section 12 – Additional requirements**

24. This section requires the holder of an approval to report, if required, to the Scottish Ministers on activities in relation to the abstraction or any associated operations. It also obliges the holder to pay any administrative subsistence fee, whether annual or otherwise, that the Scottish Ministers may fix relating to the costs of operating the abstraction control regime (other than costs relating to applications for approval, in respect of which a separate fee may be fixed under section 9). The fee fixed under this section might cover, for example, the cost of monitoring qualifying abstractions or suspected qualifying abstractions in accordance with regulations made under section 16.

### **Section 13 – Advice from other bodies**

25. This section allows the Scottish Ministers to request from Scottish Water and the Scottish Environment Protection Agency, and requires those bodies to give, advice concerning any impact of the proposed abstraction upon, respectively, Scottish Water's core functions and the environment.

### **Section 14 – Suspension and revocation**

26. This section provides for the suspension and revocation of Ministers' approval if the holder requests it, or if the holder of the approval breaches conditions of or related to the approval. The holder must be informed of the reasons for an involuntary suspension or revocation and be given the opportunity to make representations before it is imposed.

### **Section 15 – Appeal against decision**

27. This section provides for persons who are unhappy with the refusal of the Scottish Ministers' approval, with the period for which it has effect, with the conditions attached to it, or with a suspension or revocation of an approval, to appeal to the sheriff for review of that decision. The sheriff may uphold or quash the decision, or vary it (by, for example, substituting a different period of validity of the approval, or removing or altering a condition attached to it). Any such appeal must be made within 21 days of the decision being intimated.

## **Section 16 – Monitoring and records**

28. This section provides for the Scottish Ministers to make regulations about the:
- monitoring of any qualifying abstraction, or an abstraction that is suspected of being a qualifying abstraction, and related activities and associated operations, and
  - keeping of records, and the extent to which records must be made available to the Scottish Environment Protection Agency and other interested persons.

## **Section 17 – Abstraction-related offence**

29. This section provides that it is a criminal offence wilfully or recklessly to make a qualifying abstraction that is not approved or exempt, or wilfully or recklessly to breach any conditions which Ministers have attached to an approval as to the rate at which water may be abstracted, or the purposes for which the water may be used.

30. The maximum prescribed penalty for committing the offence is a fine not exceeding the statutory maximum (for which, see the prescribed sum in section 225(8) of the Criminal Procedure (Scotland) Act 1995 (c.46) – currently £10,000) on conviction under summary procedure, or an unlimited fine where the person is convicted on indictment.

## **Section 18 – Procedure for regulations**

31. This section provides that regulations made under this Part are subject to the negative procedure (for which, see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010) with the exception of regulations which modify the list of exempt abstractions or which modify the relevant threshold, which are subject to the affirmative procedure (for which, see section 29 of the 2010 Act).

## **Section 19 – Controlled Activities Regulations**

32. This section provides that nothing in this Part of the Bill affects any requirement for authorisation under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209). It clarifies that an abstraction may require both an authorisation under those Regulations and approval under this Part.

33. As it is possible that the 2011 Regulations might be altered or replaced in future, the section also enables the Scottish Ministers by regulations to modify this section and section 7, should that prove necessary as a result of the 2011 Regulations being revoked or amended or new regulations be made regarding the same subject-matter.

## **PART 3 – SCOTTISH WATER’S FUNCTIONS**

### **Section 21 – Value of water resources**

34. This section amends section 25 (Scottish Water’s general powers) of the Water Industry (Scotland) Act 2002 to clarify that the power in section 25(1) of that Act includes the power to do anything that Scottish Water considers will assist in the development of the value of

Scotland's water resources. Scottish Water's powers under section 25(1) of the 2002 Act are wide (it may engage in any activity which it considers is not inconsistent with the economic, efficient and effective exercise of its core functions), but this section puts the matter beyond doubt.

## **Section 22 – Development of assets**

35. This section inserts a new section 50A into the Water Industry (Scotland) Act 2002 which places a duty on Scottish Water to take reasonable steps to develop the value (in respect of both economic and other benefits) of its assets and expertise, although only insofar as is not inconsistent with the economic, efficient and effective exercise of its core functions. Scottish Water's core functions are defined by section 70(2) of the 2002 Act (which is amended by section 24 of this Bill) but are essentially the provision of water and sewerage services in Scotland.

## **Section 23 – Supporting renewable energy**

36. This section inserts a new section 51A into the Water Industry (Scotland) Act 2002 which places a duty on Scottish Water to take reasonable steps to promote the use of its assets (both tangible and intangible) for the generation of renewable energy, although only insofar as is not inconsistent with the economic, efficient and effective exercise of its core functions (for which see section 70(2) of the 2002 Act, as amended by section 24 of the Bill).

## **Section 24 – Meaning of core functions**

37. This section amends the definition of Scottish Water's core functions in section 70 (interpretation) of the Water Industry (Scotland) Act 2002. Currently, Scottish Water's core functions are its functions under or by virtue of the Sewerage (Scotland) Act 1968, the Water (Scotland) Act 1980, the 2002 Act, and any other enactment (with the exception of its functions under section 25(1) and (2) of the 2002 Act). This section of the Bill alters the definition of core functions so that it is confined to the provision of water or sewerage services in Scotland under all enactments (including the 2002 Act).

## **Section 25 – Subsidiaries of Scottish Water**

38. This section inserts new sections 42A and 42B into the Water Industry (Scotland) Act 2002. The new section 42A allows the Scottish Ministers to pay grants directly to, or lend directly to, a subsidiary of Scottish Water (and not only to Scottish Water itself). It also allows a subsidiary of Scottish Water to borrow from any other person. However, Scottish Water's consent is required to any borrowing from the Scottish Ministers or any person other than Scottish Water itself. The section does not, however, apply to the water and sewerage undertaking established by Scottish Water under section 13 of the Water Services etc. (Scotland) Act 2005, even if that entity is a subsidiary of Scottish Water.

39. Section 42(4) and (5) of the 2002 Act provide that Scottish Water's net borrowings in each financial year must not exceed the limit to be set in a Budget Act. In light of the fact that, under new section 42A, subsidiaries of Scottish Water may now borrow, new section 42B provides that the net amount of sums borrowed by Scottish Water and any subsidiary of it must

not exceed the amount specified in a Budget Act. Section 42(4) and (5) of the 2002 Act are repealed by this section.

40. What is a “subsidiary” for the purposes of new sections 42A and 42B of the 2002 Act is defined by reference to section 1159 of the Companies Act 2006, which provides that a company is a subsidiary of another company if that other company (a) holds a majority of the voting rights in it, (b) is a member of it and has the right to appoint or remove a majority of its board of directors, or (c) is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it (or is a subsidiary of a company that is itself a subsidiary of that other company).

### **Section 26 – Water and sewerage undertaking**

41. This section amends section 14 of the Water Services etc. (Scotland) Act 2005. The amendments will allow the business undertaking established under section 13 of the 2005 Act (Scottish Water Business Stream Limited) to borrow money from persons other than Scottish Water and the Scottish Ministers, although the consent of Scottish Water will still be required to any borrowing other than from Scottish Water itself.

## **PART 4 – RAW WATER QUALITY**

### **Section 27 – Steps for sake of quality**

42. This section inserts a new Part VIB into the Water (Scotland) Act 1980. The new Part gives Scottish Water powers of entry to premises (other than a house) for the purposes of assessing or monitoring the quality of raw water, and investigating or isolating anything that appears to be affecting, or may affect, the quality of such water.

43. “Raw water” is defined by new section 76M(5) of the 1980 Act. It includes water:
- (a) identified in an order made under section 6(1) (identification of bodies of water used for the abstraction of drinking water) of the Water Environment and Water Services (Scotland) Act 2003 (see the Water Environment (Drinking Water Protected Areas (Scotland) Order 2007 (S.S.I. 2007/529)); or
  - (b) specified in an order made under new section 76R of the 1980 Act.

Essentially, raw water is water in the water environment that is intended to be abstracted for human consumption.

44. Scottish Water must give at least 24 hours’ notice of the intended entry to the occupier (if any) of the premises and, if entry is refused, the taking of steps at the premises is obstructed (or refusal or obstruction is reasonably anticipated), or the premises are unoccupied, it can apply to the sheriff for a warrant authorising entry.

45. It is an offence under new section 76Q of the 1980 Act to intentionally obstruct a person approved by Scottish Water under new section 76O of that Act in exercise of the authority to enter premises conferred by a warrant.

## **Section 28 – Agreements about activities**

46. This section inserts a new section 68A into the Water (Scotland) Act 1980 which enables Scottish Water to enter into voluntary agreements with the owners and occupiers of land, or with local authorities, for the carrying out of activities which Scottish Water considers will help protect or improve the quality of raw water. Scottish Water may also enter into agreements whereby one party agrees to refrain from carrying out activities which Scottish Water considers detrimental to the quality of raw water.

47. As new section 68A of the 1980 Act makes provision for Scottish Water to enter into agreements with owners or occupiers of land and local authorities regarding works to protect or improve raw water quality, there is no longer any need for agreements made under section 68 of that Act to concern works for the purpose of preserving the purity of water (purity being one aspect of water quality). As a result, section 28 of the Bill amends section 68 of the 1980 Act so that agreements under section 68 may only concern drainage or the more effectual collection or conveyance of water which Scottish Water is authorised to take.

## **PART 5 – NON-DOMESTIC SERVICES**

### **Section 29 – Deemed contracts**

48. The Water Services etc. (Scotland) Act 2005 established a framework whereby non-domestic customers could receive water and sewerage services from any one of a number of licensed providers operating in a competitive market, with Scottish Water effectively acting as the wholesale provider of the services. This section inserts into the 2005 Act new sections 20A and 20B, which address situations where customers are receiving services without being in a contract with a particular licensed provider.

49. New section 20A of the 2005 Act provides that where water or sewerage services are provided to premises by Scottish Water as wholesale provider but, for whatever reason, there is no contract in place between a licensed provider and the occupier, a deemed contract shall exist between the occupier and whichever licensed provider is designated by the Water Industry Commission for Scotland.

50. New section 20B of the 2005 Act provides for the basis on which a provider is designated for the purposes of new section 20A, and the terms and conditions of the deemed contract, to be set out in a scheme which is to be prepared by the Water Industry Commission for Scotland.

### **Section 30 – Notification of occupancy**

51. This section inserts new sections 20C and 20D into the Water Services etc. (Scotland) Act 2005.

52. New section 20C of the 2005 Act requires the owner of premises to which water or sewerage services are provided by a licensed provider (i.e. a provider licensed under section 6 of the 2005 Act) to provide information to the provider in respect of any change in occupancy. The

Scottish Ministers may by regulations add to the information to be provided, and make rules on the timing of and procedure for the provision of information.

53. New section 20D of the 2005 Act provides that if the owner fails without reasonable excuse to advise the provider that a new occupier has taken occupancy, then the owner becomes jointly and severally liable with the new occupier for relevant charges. The Scottish Ministers may by regulations make rules on the timing of when joint liability arises and associated procedures, and for exempting from liability owners who have taken prescribed steps to ensure the accuracy and completeness of information provided by them.

## **PART 6 – SEWERAGE NETWORK**

### **Section 31 – Priority substances etc.**

54. This section inserts a new paragraph (p) into subsection (3) of section 29 (decision on application for trade effluent consent) of the Sewerage (Scotland) Act 1968. The new paragraph allows Scottish Water to impose conditions as to the elimination or diminution of any priority substance or pollutant contained in trade effluent in a trade effluent consent granted under section 26 of the 1968 Act. Any occupier of trade premises who discharges trade effluent into the sewers of Scottish Water contrary to conditions imposed under Part 2 of the 1968 Act commits a criminal offence under section 24(2) of that Act.

55. The section also inserts a new section 29A into 1968 Act which defines the terms “priority substance” and “pollutant” for the purposes of new section 29(3)(p) of the 1968 Act. “Priority substance” is defined by reference to Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy, and “pollutant” is defined by reference to the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209). The Scottish Ministers may make consequential modifications of those definitions by regulations where the Directive or Regulations are modified..

### **Section 32 – Substances generally**

56. This section inserts a new section 46A into the Sewerage (Scotland) Act 1968 which creates a new offence of passing, or permitting to be passed, fat, oil or grease into a public sewer or connected drain where it is liable to interfere with the free flow of the sewer’s contents or adversely affect the treatment or disposal of its contents. The offence only applies to the passing of such matter from trade premises (defined by section 59(1) of the 1968 Act as any premises used or intended to be used for carrying on any trade or industry).

57. The section also inserts a new section 46B into the 1968 Act, which allows Scottish Water to recover the cost of investigating or remedying any resulting damage to or blockage of the sewer or drain, or interference with the free flow of the sewer’s contents, from the owner or occupier responsible.

58. The section amends section 46 (certain matter not to be passed into drains) of the 1968 Act to bring the maximum penalties applicable to that offence on summary conviction into line with the maximum penalties provided for in the new section 46A(4).

### **Section 33 – Powers of entry**

59. This section amends section 48 (powers of entry) of the Sewerage (Scotland) Act 1968 to provide that Scottish Water’s powers of entry under that section extend to taking entry for the purposes of:

- monitoring, inspecting, and testing sewage (in addition to taking samples away for analysis, which is already provided for by section 48 of the 1968 Act);
- installing or maintaining monitoring, testing or sampling equipment on the premises; and
- investigating the source of any matter or substance (other than sewage) which is passing from the premises into the public sewerage network.

### **Section 34 – Common maintenance**

60. This section inserts a new Part IIA into the Sewerage (Scotland) Act 1968. The new Part applies to private sewage treatment works which are owned in common by two or more persons and the discharge of the contents of which are authorised under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209). Private sewage treatment works such as septic tanks will usually involve some discharge to the water environment and that discharge will almost always require authorisation under the 2011 Regulations.

61. The term “private sewage treatment works” is defined in section 59 of the 1968 Act as meaning any works, apparatus or plant used for the treatment or disposal of sewage that is not vested in Scottish Water. It includes a septic tank, but not a SUD (Sustainable Urban Drainage) system.

62. At common law, where property is owned in common, the consent of all *pro indiviso* owners is generally required before any alterations, non-essential repairs or other works can be carried out upon it, although the grant of ownership (as recorded in the title to the property) may make different arrangements. The new Part provides that, where works need to be carried out to private sewage treatment works that are owned in common in order to comply with conditions of the works’ authorisation under the 2011 Regulations, any one proprietor may carry out (or instruct) those measures without having to secure the consent of all (or a certain proportion of) the other co-proprietors. Before doing so, the owner(s) wishing to carry out the measures must serve a notice under new section 38C of the 1968 Act upon each of the other owners, who may apply to the sheriff under new section 38D for review of the notice if they are unhappy with the measures proposed.

63. The new Part also makes provision for each of the owners of the works to be liable for a share of the cost of measures taken under new section 38B(2) of the 1968 Act, based on the same proportion that each owner’s *pro indiviso* share of the property bears to the whole. Provision is

made for an owner to recover the cost of measures taken, subject to the cost having been incurred and to the service of a notice under new section 38E.

64. Provision is made in new section 38F of the 1968 Act for liability for the cost of measures to continue notwithstanding a change in ownership of any property connected to the private sewage treatment works.

65. New section 38G of the 1968 Act provides for a definition for the 2011 Regulations and related matters. The Scottish Ministers may make consequential modifications of that definition by regulations.

## **PART 7 – WATER SHORTAGE ORDERS**

### **Section 35 – Proposal for order**

66. This section makes provision for Scottish Water to propose to the Scottish Ministers that they (the Scottish Ministers) make an administrative water shortage order. Scottish Water may only make such a proposal if it believes that there is a serious deficiency (or threatened serious deficiency) of water supplies in an area. The section sets out the information that must be included in and accompany the proposal.

67. The provision for water shortage orders replaces the provision for drought orders in the Natural Heritage (Scotland) Act 1991 (the relevant provisions of which are repealed by section 48 and schedule 3).

### **Section 36 – Making of order**

68. This section enables the Scottish Ministers to make two different types of water shortage order: an ordinary water shortage order and an emergency water shortage order. In order for Ministers to make an ordinary water shortage order, Scottish Water must have made a proposal and Ministers must be satisfied that the deficiency or threat in question exists. In order to make an emergency water shortage order, Ministers must, in addition, be satisfied that there is a risk to the health, or social or economic well-being, of people in the area affected. The differences in the effect of an ordinary water shortage order and an emergency water shortage order are that an emergency water shortage order may permit Scottish Water to supply water by means other than through pipes (see section 37(3)), and an emergency water shortage order comes into force more quickly after it is made and is of shorter duration (see paragraph 8 of schedule 1).

### **Section 37 – Content of order**

69. This section sets out what a water shortage order may contain. A water shortage order may contain such provision as the Scottish Ministers consider necessary or expedient to abate a serious deficiency (or threatened serious deficiency) of water supplies in an area. Examples of what a water shortage order may do are given. Subsection (3) provides that an emergency water shortage order may permit Scottish Water to supply water by means other than through pipes (which an ordinary water shortage order may not do).

### **Section 38 – Abstraction and discharge**

70. This section clarifies that where the Scottish Ministers through a water shortage order permit Scottish Water to abstract water from or discharge it to a particular place, that permission gives Scottish Water legal entitlement to do so, even if, for example, a person has exclusive rights to abstract from the water body in question. It does not, however, override any requirement for an authorisation under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (see section 46(1)), so Scottish Water will still require to apply for and obtain authorisation from the Scottish Environmental Protection Agency under the 2011 Regulations, if those regulations so require it.

71. The section also clarifies that a restriction or prohibition on the abstraction of water under a water shortage order restricts or prohibits the abstraction of the water even if the restriction or prohibition interferes with any right of any person to abstract the water.

### **Section 39 – Further provision**

72. This section introduces schedule 1, which makes more detailed provision in relation to procedural and other matters concerning water shortage orders.

### **Section 40 – Appeal against order**

73. This section enables a person who is unhappy with a water shortage order to appeal to the sheriff, who may affirm the order or direct the Scottish Ministers to amend or revoke it. Any appeal must be made within 14 days from the day on which notice of the order is published. The sheriff may suspend the effect of the order (or of any part of it) pending the determination of the appeal.

### **Section 41 – Non-compliance offence**

74. This section makes it an offence to fail, without reasonable excuse, to comply with a water saving measure imposed by a water shortage order, or a restriction or prohibition on the abstraction of water imposed by such an order.

### **Section 42 – Recommendations issuable**

75. This section obliges Scottish Water to publicise the fact that it considers there to be a threatened serious deficiency of water supplies in an area and to recommend that people in the area comply with such water saving measures as it considers will assist in abating the threat. Unlike water saving measures imposed by a water shortage order, it is not a criminal offence to fail to comply with water saving measures recommended under this section.

### **Section 43 – Directions on functions**

76. This section provides for the Scottish Ministers to be able to give directions to Scottish Water regarding the exercise of its functions under a water shortage order.

#### **Section 44 – Water saving measures**

77. This section introduces schedule 2, which lists the water saving measures that may be recommended under section 42, or imposed in a water shortage order under section 37(2)(e).

#### **Section 45 – Serious deficiencies**

78. This section defines a serious deficiency of water supplies by reference to there being insufficient water to enable Scottish Water to carry out its functions under Part II of the Water (Scotland) Act 1980, which concern the supply of wholesome water for domestic and non-domestic purposes.

#### **Section 46 – Controlled Activities Regulations**

79. This section makes it clear that, although Ministers may permit Scottish Water to make an abstraction or take other measures in connection with a water shortage order, that permission does not absolve Scottish Water of the need to separately obtain any authorisation required under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209). It also provides that Scottish Ministers may make consequential modifications of that definition by regulations.

80. Scottish Water will need to apply separately for any authorisation that it may need under the 2011 Regulations, and is required by section 35(3)(b) to provide a copy of any associated application under those Regulations to Ministers when proposing a water shortage order.

81. This section confirms that any restriction or prohibition on the abstraction of water imposed by a water shortage order overrides any authorisation of that abstraction under the 2011 Regulations, while the water shortage order is in effect.

### **PART 8 – GENERAL PROVISIONS**

#### **Section 48 – Repeal of enactments**

82. This section introduces schedule 3 which makes minor and consequential repeals.

#### **Section 49 – Ancillary power**

83. This section allows the Scottish Ministers by regulations to make supplemental, incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in connection with the Bill.

### **SCHEDULES**

#### **Schedule 1 – Water shortage orders**

84. Paragraph 1 requires Scottish Water to publish a public notice of a proposal for a water shortage order. The notice must state that representations about the proposal may be made in writing to the Scottish Ministers within 14 days of publication of the notice.

85. Paragraph 2 makes provision for owners, lessees and occupiers of premises upon which a water shortage order would permit Scottish Water to carry out works to receive notice of the proposal. It also requires Scottish Water to give notice to a person whose right to abstract water would be restricted or prohibited by the order. Such persons may make representations about the proposal in writing to the Scottish Ministers within 14 days of notification being given.

86. Paragraph 3 requires the Scottish Ministers to give a person notice of a proposal where they intend to make a water shortage order that would restrict or prohibit the abstraction of water by that person, but the person has not already received notice because the restriction or prohibition was not included in the draft order.

87. Paragraph 4 makes provision for Ministers to seek SEPA's advice in relation to adverse impacts upon the water environment and the need, if any, to restrict or prohibit the abstraction of water by any person.

88. Paragraph 5 requires the Scottish Ministers to consider representations made and advice received before making their decision. It also provides that they may make a water shortage order in the same terms as the draft order contained in Scottish Water's proposal, make an order in different terms to the draft order, or refuse to make an order.

89. Paragraph 6 provides for publication of the order. Where the order imposes water saving measures, the publication requirements are more onerous in order to increase the likelihood of bringing the measures to the attention of those liable to be affected by them.

90. Where a water shortage order restricts or prohibits the abstraction of water by a person, paragraph 7 provides for direct service of notice of the water shortage order upon the abstractor affected.

91. Paragraph 8 makes provision for the coming into effect and duration of water shortage orders. Ordinary water shortage orders come into effect 3 days after notice of them is published under paragraph 6, and have effect for 6 months. Emergency water shortage orders come into effect on the day after notice of them is published, and have effect for 3 months. The Scottish Ministers can extend the duration of both types of order by up to two months.

92. Paragraph 9 makes provision for the publication of notice of any extension of a water shortage order, with more onerous publication requirements where the order extended imposes water saving measures. Where the order extended restricts or prohibits the abstraction of water by a person, the Scottish Ministers are required to give individual notice to that person.

93. Paragraph 10 provides for anyone aggrieved by an extension of a water shortage order to appeal to the sheriff.

94. Paragraph 11 allows Ministers to review a water shortage order at any time and, if they consider it appropriate following such a review, to revoke it in whole or in part. Provision is made for public notice of the revocation to be given, and for the giving of individual notice to

any persons who were subject to a restriction upon, or prohibition from, abstracting that has been wholly or partly removed by the revocation.

95. Paragraphs 12 to 16 give Scottish Water powers of entry, by court warrant if necessary, in relation to assessing the need for water shortage orders, implementing them, and enforcing them. It is an offence to obstruct a person who is exercising authority to enter conferred by a warrant.

96. Paragraph 17 provides for Scottish Water to pay compensation to anyone who has sustained loss or damage as a result of measures undertaken, or restrictions or prohibitions imposed, in accordance with a water shortage order, or entry onto premises by an authorised person. Compensation is not payable if the loss or damage is caused by the fault of the person who sustains it, if it results from the imposition of a water saving measure, if it results from changes (sanctioned by the order) in the way Scottish Water supplies water, or if it is caused by the deficiency of water supplies that the order is intended to abate. If the parties cannot agree whether compensation is payable or the appropriate amount of compensation, the dispute can be determined by a sheriff.

#### **Schedule 2 – Water saving measures**

97. Schedule 2 lists the water saving measures that may be recommended by Scottish Water under section 42, or imposed by a water shortage order under section 37(2)(e).

#### **Schedule 3 – Repeal of enactments**

98. This schedule repeals section 69 (power to restrict use of hosepipes) of the Water (Scotland) Act 1980 Act and certain provisions of the Natural Heritage (Scotland) Act 1991 which concern drought orders. The provisions of the 1991 Act regarding drought orders are replaced by the provisions of this Bill regarding water shortage orders.

99. The schedule also repeals section 26 of the Water Environment and Water Services (Scotland) Act 2003, which requires the Scottish Ministers to report to the Scottish Parliament annually regarding compliance with the Water Framework Directive (2000/60/EC) and regarding progress towards achieving the environmental objectives for water status that member states are required to set under that Directive.

---

## **FINANCIAL MEMORANDUM**

### **INTRODUCTION**

100. This document relates to the Water Resources (Scotland) Bill introduced in the Scottish Parliament on 27 June 2012. It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament's Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

101. This Bill takes forward the Scottish Government's wish to ensure that Scotland makes every effort to utilise fully its abundant water resources. The Government has set out its vision of Scotland as a Hydro Nation – the first such nation in the world – a nation that manages its water environment to the best advantage, employing its knowledge and expertise effectively at home and internationally. It is developing a wide ranging programme of work to achieve this vision – the Hydro Nation agenda. The Bill is an essential keystone to this objective and sets a framework to develop the value of Scotland's water resources, Scotland's water knowledge and Scotland's water technology. The successful achievement of this vision will be to the benefit of the people of Scotland and more widely will contribute to the better global management of water, the planet's most precious resource. The increase in the value should be measured widely in economic, environmental and social terms. It will be secured by public bodies, private companies and our academic and third sectors through new duties and responsibilities and improvements in how we manage water resources.

102. The Scottish Government considers that of fundamental importance to the Hydro Nation agenda is the good management of Scotland's water resources. It is therefore sensible to seek to legislate to improve that management wherever possible, in line with new knowledge, procedures and approaches. This Bill provides an opportunity to consider and update existing law and Scottish Ministers have listened to stakeholders in developing the new provisions. Those parts of the Bill which update the law for example in relation to catchment management and priority substances, aim to reflect a more proactive approach to management of the water environment. The Bill is in eight Parts and these are described below:

Part 1: duty of Scottish Ministers to develop the value of Scotland's water resources

Part 2: a new approval regime for water abstraction

Part 3: duty of Scottish Water to develop the value of its assets, and provision about grants and loans to its subsidiaries

Part 4: protecting raw water sources

Part 5: contracts for non-domestic services

Part 6: discharge into public sewers, and maintenance of private sewage treatment works

Part 7: water shortage orders

Part 8: general provisions, repeals and commencement.

103. This Memorandum considers the cost implications of the whole Bill for the Scottish Government and local authorities, before looking at other key bodies in the context of each Part of the Bill. Many of the requirements under the Bill will be delivered by the aligning of existing work plans and budgets with the new duties. Other areas of the Bill are enabling in nature and hence do not directly impose costs. As a consequence the concept of margins of uncertainty does not apply as it would when new costs are imposed. Where new costs are imposed by the Bill, such as the requirement of landlords to notify licensed providers, a range of costs is provided to demonstrate the uncertainty in the estimate.

104. Scottish Water features in several parts of the Bill. It is predominantly financed by customer charges, the levels of which are set by the Water Industry Commission for Scotland.

The Scottish Government also provides loan financing to support an element of the capital investment programme.

## **COSTS ON THE SCOTTISH GOVERNMENT**

105. Part 1 of the Bill 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”. In February 2012 the Scottish Ministers published “Scotland The Hydro Nation Prospectus and Proposals for Legislation” which set out the first steps they intend to take to deliver this duty. These steps cover economic development, international action and research excellence. Scottish Ministers have allocated £3 million per year from 2012/13 to 2014/15 to finance these steps. This expenditure, which is already planned, supports the Hydro Nation agenda and is not directly attributable to the Bill. However, following the passage of the Bill, this expenditure will support a range of actions central to the delivery of the duty on Ministers to develop the value of Scotland’s water resources. Key expenditure items to support these steps will include up to £1 million per annum for international development grants for water related projects in developing nations under the Climate Justice Fund. The remaining £2 million will support delivery of Hydro Nation Saltire fellowships and post-graduate posts. It will also allow the development of water technology innovation facilities to accelerate water technologies to market and support a range of events and projects including establishing the Hydro Nation Forum to bring together key players to shape the water resources agenda in Scotland.

106. The expenditure will directly benefit the Scottish economy by supporting the development and deployment of new technologies and extending the scope and scale of research on water related subjects. The spending is also expected to raise the profile of Scotland as a Hydro Nation thus increasing our influence on global water management issues. The international development spending on water projects is a practical contribution to Scotland’s commitment to global climate justice and better global water governance.

107. As a result of the Bill, staffing and administrative costs of £100,000 annually will be incurred on policy implementation and reporting going forwards. These costs will be subsumed within existing budgets for administering the water industry in Scotland.

108. The Scottish Ministers already fund academic work on water issues. A Centre of Expertise on Water has been commissioned and receives funding of £1m a year. A further £2.2 million per annum is provided for strategic research on Water and Renewable Energy – both of these expenditures, while not a direct consequence of the Bill, support the Hydro Nation agenda.

109. Part 2 of the Bill prohibits qualifying abstractions over the 10 megalitres threshold unless they have been approved by the Scottish Ministers and sets out a framework by which persons may apply for this approval. There are currently less than twenty inland water abstractions over the proposed threshold. As a result of growth in the distilling industry and the potential for large water users to be attracted to Scotland it is estimated that there will be between five to ten applications to Ministers over the next five years for new or increased abstractions. The staffing, administrative and enforcement costs associated with these applications is estimated to be £15,000 annually. These costs may be recovered from application and on-going fees to abstractors. Where they are not, the costs will be subsumed within existing budgets for

administering the water industry in Scotland. Due to climate change and population growth increasing the demand for fresh water, Scotland will become an increasingly attractive place for large water users to locate to. Over time it is therefore expected that the number of applications will increase.

110. Part 3 of the Bill provides Scottish Ministers with the powers to be able to lend or make grants to Scottish Water's subsidiaries. With the permission of Ministers, Scottish Water and, with the exception of Business Stream, its subsidiaries already have powers to borrow from third parties. For consistency, Business Stream is also provided with the power to borrow from a third party. These are enabling powers and do not impose any direct costs on Scottish Ministers. Under Part 7 of the Bill, Scottish Ministers will need to consider any applications from Scottish Water for water shortage orders. The costs of considering any applications, which are expected to be infrequent, will be subsumed within existing budgets for administering the water industry in Scotland. The repeal of section 26 of the Water Environment and Water Services (Scotland) Act 2003 in schedule 3 to the Bill will lead to some minor administrative savings.

## **COSTS ON LOCAL AUTHORITIES**

111. Local authorities are not given any specific role or responsibility by the Bill. There are, therefore, no direct costs falling to local authorities specifically arising from the Bill. Local authorities are named as a party that Scottish Water may enter into agreements with for the purpose of protecting or improving the quality of any raw water – this is an enabling power and does not impose any duty or burden, and therefore cost on local authorities. Some local authorities may hold trade effluent consents from Scottish Water, which enable them to discharge trade effluent to the sewer. The provisions of the Bill clarify that Scottish Water can include conditions about priority substances in trade effluent consents. Further explanation of these provisions is provided below – at this stage it is not possible to quantify the impact on any specific local authority, if any, that will result from this provision.

## **COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES**

112. There will be no costs falling on private individuals as a result of the Bill, other than those that may arise from particular water shortage orders under Part 7 of the Bill.

113. The costs falling on other bodies and businesses are presented according to the Parts of the Bill, as follows:

### **Part 1: Development of water resources**

114. Part 1 of the Bill 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. It also provides that Scottish Ministers may give a designated body directions for the purpose of securing its participation and identifies five public bodies as designated bodies, these being: Scottish Water, Scottish Environment Protection Agency (SEPA), Scottish Natural Heritage (SNH), Scottish Enterprise and Highlands & Islands Enterprise (HIE). This Part of the Bill does not impose any new duties on these bodies, so there are no specific costs imposed directly by the Bill under this Part. It is intended that the Hydro Nation agenda will be

delivered by these designated bodies through aligning of the existing budgets and work plans with the Hydro Nation agenda.

115. To deliver its existing statutory functions Scottish Water spends in excess of £1bn per year, employing 3500 staff. Scottish Water's business activity is focused on water resource management through the supply of treated drinking water to customers and drainage and treatment of wastewater and sludge. Scottish Water has commercial subsidiaries that are developing their response to the wider Hydro Nation agenda – the investment plans associated with these are set out below.

116. SEPA's corporate plan identifies water as a key priority. Approximately £31 million annually of its revenue budget is spent delivering its existing statutory duties on water activities e.g. regulation, monitoring, river basin management planning, representing around 40% of the overall budget. These costs and activities support the development of Scotland's water resources and underpin the wider Hydro Nation agenda. Additionally, SEPA's work on flooding (which is not included in the costs above) further contributes to the Hydro Nation agenda.

117. SNH is charged with looking after Scotland's wildlife, habitats and landscapes. To deliver its existing statutory functions SNH has a Freshwater and Wetlands Team (8 FTEs) plus senior management, whose work is directly aligned with the development of Scotland's water resources. Additionally, SNH has a number of staff across the business who are contributing to the wider Hydro Nation agenda e.g. casework relating to assessment of hydro schemes and partnership working on freshwater designated sites. This amounts to another 8 FTEs.

118. Scottish Enterprise is well-placed to support businesses who wish to develop the value of Scotland's water resources. The workload is distributed across the organisation, as companies who have an interest in water often do not identify themselves directly as "water companies" as such; they may be textiles, food processing, biosciences, technology or consultancy companies who use or offer expertise in the water sector. The wider Hydro Nation agenda provides impetus to the work that Scottish Enterprise is undertaking with these companies.

119. The Environmental Clean Technologies Strategic Partnership (ECT Partnership), which consists of the Enterprise Networks, SEPA, the Scottish Funding Council and the Scottish Government, delivers coordinated support for businesses and academia within the emerging Environmental and Clean Technologies sector to accelerate the development of new technologies. HIE is the lead agency on behalf of the ECT Partnership for the Water sub-sector. On behalf of the ECT Partnership, HIE is currently project managing a number of research projects relating to the water sector and has commenced a feasibility study for a water innovation centre in Scotland. This activity is directly aligned with the wider Hydro Nation agenda. Activity in these areas is led by the Director of Energy and Low Carbon with support from lead managers and other staff.

## **Part 2: Control of water abstraction**

120. The Bill prohibits qualifying abstractions over a threshold unless they have been approved by the Scottish Ministers and enables them in regulations to make provision about the procedure in relation to an application. If the Scottish Ministers approve an abstraction they may

attach conditions to it. It is estimated that between five and ten applications will be made over the next five years.

121. The costs of applying for an application will be determined by the procedures set down in regulations – these costs will be set out in a Business Regulatory Impact Assessment that will accompany those regulations. The costs of complying with any conditions that Ministers attach to their approval, if any, will vary on a case by case basis.

122. The Bill includes regulation making powers that enable Scottish Ministers to fix a reasonable fee for an application and an on-going annual fee. If a fee level for either is set it will only be to recover the administrative costs of considering applications and maintaining the abstraction regime. The costs and impact of any such regulations will be set out in a Business Regulatory Impact Assessment that will accompany them.

### **Part 3: Scottish Water's functions**

123. This Part of the Bill:

- clarifies that Scottish Water has the general power to do anything to assist in the development of the value of Scotland's water resources;
- requires Scottish Water to take all reasonable steps that it considers necessary to develop the value of its assets;
- requires Scottish Water to promote and facilitate the use of its assets for renewable energy generation;
- distinguishes between Scottish Water's core functions, these being the provision of water and sewerage services, and its other functions;
- enables Ministers to make grants and lend directly to a Scottish Water subsidiary; and
- enables Business Stream to borrow from sources other than the Scottish Government and Scottish Water, the only sources permitted under current legislation.

124. Clarification of Scottish Water's general powers and functions does not generate any new costs, nor do the enabling powers for granting or lending to Scottish Water subsidiaries.

125. In response to the Hydro Nation agenda, and to deliver the new functions imposed by this Part of the Bill, Scottish Water has developed a Growth Plan. The 2012 version of this plan anticipates £44 million of direct investment over 2012/13 and the following two years primarily in renewable energy and financed from internally generated resources. All such schemes will only be taken forward where there is a strong commercial case for doing so. As a consequence over time these investments should generate income that is sufficient to cover the initial investment cost, the operating costs of these schemes and a commercial return on capital.

#### **Part 4: Raw water quality**

126. The Bill enables Scottish Water to undertake activities in drinking water catchments to protect sources of drinking water. Specifically, the Bill provides powers for Scottish Water to access any premises other than a house to inspect and monitor factors that may be affecting the quality of raw water and to enter into agreements with owners and occupiers of land to implement best practice to protect drinking water sources. The Bill provides the opportunity to make considerable cost savings on treatment and capital investment costs.

127. Scottish Water's costs for visiting a drinking water catchment, taking samples and analysing these samples range from £50k – £200k per catchment annually, depending on the physical size of the catchment and its remoteness from the laboratory. Any new costs incurred by Scottish Water in this regard will be covered by reduced operational costs – see below.

128. The costs to Scottish Water of entering into agreements with landowners to implement best practice to protect drinking water sources will vary depending on the nature of the agreement. Scottish Water has budgeted to spend £1.2 million per year across 7 catchments in the period to 2015.

129. Implementation of best practice to protect drinking water sources can reduce operational expenditure as a result of lower levels of treatment being required and can save the need for capital expenditure when additional treatment steps can be avoided. Scottish Water has estimated that in one large drinking water catchment, implementing best practice could save upwards of £10m over a 25 year period. The economic case will be different for each catchment and water treatment works.

#### **Part 5: Non-domestic services**

130. The Bill makes provision for deemed contracts to exist between the owner or tenants of commercial premises and a licensed provider (LP) for water and wastewater services, where no formal contract exists. The introduction of deemed contracts is a legal and administrative tool to ensure there is clarity as to the legal relationship between the LP of water and wastewater services and non-domestic customers. It is estimated that LPs could collectively save in the region of £30,000 to £60,000 per annum (at 2011 prices) in reduced administrative costs by the elimination of enquiries on this subject as a result of the Bill. While it is not possible to quantify them as they vary case by case, there will also be savings from reductions in escalation costs, late payment costs, legal costs for recovery of charges and any unrecoverable charges that have to be written off.

131. The Bill also provides that landlords of commercial properties have an obligation to inform the relevant LP of any change in the occupancy of their property. While the required details to be provided are simple, landlords will incur an administration cost to fulfil this obligation. However, as landlords have similar obligations for other utilities, these costs are considered to be marginal. It is estimated that the total cost across Scotland will be between £90,000 and £250,000 per year once the Bill has been commenced.

132. The introduction of an obligation to inform is designed to reduce the amount of bad debt that exists within the non-household market. Bad debt is a cost to LPs for which all non-household customers contribute. Based on analysis of the levels of bad debt, we estimate that the obligation to inform provision in the Bill will bring a benefit to the non-household market in Scotland of between £528,000 and £2.64m per year once the Bill has been commenced.

## **Part 6: Sewerage network**

### *Discharge into public sewer*

133. The Priority Substances Directive, 2008/105/EC, sets environmental quality standards for surface waters to achieve a target of “Good Chemical Status” for certain named “Priority Substances”. It is a daughter directive of the Water Framework Directive, 2000/60/EC, which requires good status to be achieved in all water bodies by 2015 unless it is disproportionately costly or technically infeasible to do so. The designated priority substances are a wide range of chemicals that are considered to be detrimental to the water environment or organisms that live in the water environment. The European Commission has a rolling programme to designate new priority substances. Costs will arise in relation to the daughter directive and work is on-going within Scotland to establish the most cost effective way of delivering this European directive, with an emphasis on control of pollution at source and the “polluter pays” principle.

134. The Bill clarifies that trade effluent consents issued by Scottish Water can identify “priority substances” and a range of other substances that are subject to control under the Water Framework Directive. It also provides for Scottish Water to have powers of entry for monitoring, sampling and inspecting inputs into the sewerage network and establishes a specific offence for the discharge of fats, oils and grease to the foul sewer from non-domestic dwellings.

135. Work is on-going to establish the loadings of “priority substances” in the sewerage network by Scottish Water and SEPA is working to establish the extent to which priority substances are affecting the water environment. Additionally, SEPA is considering the extent to which measures are required to achieve “Good Chemical Status” and what those measures would be, including the use of discharge consents under a Water Environment (Controlled Activities) Regulations 2011 (CAR) licence on Scottish Water. Only after SEPA has completed this work will Scottish Water be in a position to assess, where a waste water treatment works would fail its revised discharge consent, whether it is more cost effective to install additional treatment (i.e. an end of pipe solution) or to limit the discharge that is permitted in its trade effluent consents (amongst other measures that will appear in the River Basin Management Plans). Initial estimates by Scottish Water of the investment requirements for end of pipe solutions at waste water treatment works receiving trade effluent suggests they could be as high as £1.8bn over the next 25 years.

136. In most situations, it is likely that source control by producers will be far more cost effective than end of pipe solutions at Scottish Water’s waste water treatment works. The costs for businesses with a trade effluent consent from Scottish Water, which may be reviewed to include priority and other substances, cannot be estimated at this time as all the components of the costs are not yet fully known i.e. which waters in the environment need to be improved, which wastewater treatment works discharge into these waters and hence which trade effluent discharges are affected.

137. A trader may be required to implement pre-treatment of their discharge in order to satisfy the conditions of a trade effluent consent. The costs of this will vary depending on the substance to be treated and the volumes of the trade effluent being discharged.

138. The Bill provides for Scottish Water to have powers of entry for proactive monitoring, sampling and inspecting inputs into the sewerage network. Sewerage networks are open systems which are very difficult to “police”. Priority substances can enter directly via trade effluent discharges (e.g. hospitals, industrial plants etc.), via surface water drains (e.g. road runoff, drainage from premises) or from domestic inputs (cosmetics, pharmaceuticals, flushing of paints and solvents and matter excreted from the human body). The estimated additional cost as a result of the provisions in the Bill of undertaking pro-active catchment inspection, analysis and advisory/enforcement work with dischargers to the network is in the region of £1m per annum – this would be met from customer charges and would begin to be incurred as soon as the Bill is commenced. It is within the parameters of the allowed revenue determined by the WICS.

139. The Bill clarifies that the discharge of fats, oils and greases into the foul sewer is an offence. Fats, oils and greases are contributors to chokes, particularly in pumping stations. There will be savings to Scottish Water’s operating costs arising from this clarification but it is too early to assess the scale of these savings.

#### *Private sewage works*

140. Where a septic tank is owned communally by a number of properties, the Bill will enable one or more owners to employ septic tank emptying services and recover the costs from the shared owners. Septic tank emptying is necessary in order to keep it in good working order and ultimately protect the water environment from human pollution. The requirement is not new; all septic tank owners have this responsibility. Consequently, the Bill does not impose new costs on septic tank owners – instead it provides a route to achieve proper maintenance of septic tanks. The costs of emptying will be borne by owners only; the Bill gives no rights to tenants or other occupiers to conduct any works in relation to shared septic tanks.

141. Scottish Water has a statutory duty to provide a septic tank emptying service and charges £158.90 for scheduled emptying of a domestic tank. Other commercial providers charge similar amounts.

#### **Part 7: Water shortage orders**

142. The Bill replaces the existing framework for managing temporary water shortages with more streamlined processes that align with the regime that manages abstractions and discharges to the water environment, the Water Environment (Controlled Activities) Regulations 2011 (CAR).

143. The introduction of more streamlined processes for managing temporary water shortages offers a number of improvements over the existing arrangements, including:

- reduced time from application to introduction of water shortage management mechanisms with the consequence that less applications will be required to be made;

- more flexibility for customers, through the introduction of advisory water saving measures prior to any bans on water use; and
- lower administrative overheads resulting from the alignment with the regime that manages abstractions from and discharges to the water environment.

These benefits will deliver savings both for Scottish Water and for customers whenever a temporary water shortage event occurs. The frequency, intensity, duration and location of temporary water shortage events cannot be predicted and hence it is not possible to quantify any savings that will result from the Bill. However the Climate Change Risk Assessment for Scotland<sup>1</sup> which was published in January 2012 predicted that summer rainfall will fall by 12% by 2050 and that future temporary water shortages may be more severe than those experienced to date.

144. For information, the cost for Scottish Water of the localised and relatively short term water shortage in Dumfries and Galloway in 2010 was £550k. Had the temporary water shortage continued, resulting in water requiring to be tankered into the locality, tankering costs (estimated at £0.25m per day) would have been incurred. To fulfil existing Ministerial requirements Scottish Water has plans to produce 48 drought plans over the next 5 years at a cost of around £0.6m. The annual cost of maintaining the existing plans and producing regional plans is expected to be in the region of £0.1m per annum. These costs are included within current investment plans and demonstrate that Scottish Water is able to respond to temporary shortages of water in line with its statutory duty.

## **COSTS ARISING FROM FINES WITHIN THE BILL**

145. The Bill introduces 5 new criminal offences which attract fines.

146. Part 2 of the Bill introduces a requirement for large abstractions of fresh water to be authorised by the Scottish Ministers. Part 2 will contain a new offence relating to a large abstraction that has not been approved by the Scottish Ministers or where certain conditions of the approval are breached. Anyone guilty of such an offence may be subject to a fine on summary conviction not exceeding the statutory maximum, currently £10,000 or an unlimited fine on indictment.

147. Part 4 provides for protection of waters in the environment used for drinking water. These provisions allow Scottish Water to enter land in order to identify the causes of pollution in drinking water sources and then enter into agreements to remedy these problems. Part 4 will contain a new offence relating to obstructing Scottish Water in these activities. Anyone guilty of intentionally obstructing Scottish Water exercising powers of entry conferred by a sheriff court warrant may be subject to a maximum fine on level 3 on the standard scale, currently £1,000.

148. Part 6 provides that discharging fats, oils and greases (FOG) from non-domestic premises into the public sewer so as to cause, or be likely to cause, a blockage of the public sewer or to interfere with the free flow of its contents is an offence. The maximum fine is £40,000 on summary conviction (or up to 12 months imprisonment) and an unlimited fine (or up to two

---

<sup>1</sup> The Climate Change Risk Assessment for Scotland can be found at :  
<http://www.adaptationscotland.org.uk/3/98/0/UK-Climate-Change-Risk-Assessment.aspx>

years imprisonment) on indictment. This provision clarifies that discharging FOG in particular is an offence under the Sewerage (Scotland) Act 1968, consequently the fines in this area are not new.

149. Part 7 makes provision for managing water shortages. This Part lays out arrangements for managing demand for water from domestic and commercial customers as water resources decline. Part 7 will contain new offences relating to i) non-compliance with a water saving measure and ii) an obstruction offence. Anyone found guilty of using water in a manner that contravenes a mandatory water management order may be subject to a fine of up to £10,000 for summary conviction. Anyone found guilty of intentionally obstructing Scottish Water exercising powers of entry conferred by a sheriff court warrant may be subject to a maximum fine on level 3 on the standard scale, currently £1000.

### **SUMMARY OF COSTS**

150. The below table summarises the expenditure being made to support the delivery of the Hydro Nation agenda and the costs that arise as a direct result of the Bill

	<b>Expenditure being made to support the delivery of the Hydro Nation agenda</b>	<b>Costs arising as a direct result of the Bill</b>
<b>Scottish Government</b>	<p>£3m per year from 2012/13 to 2014/15 contributing to the Climate Justice Fund and Hydro Nation Forum, Innovation Park, Hydro Nation Saltire Fellowships &amp; PhDs and other related activity to develop the value of water resources in Scotland.</p> <p>£3.2m per year developing a Water Centre of Expertise and strategic research on Water and Renewable Energy</p>	Staffing and administration costs of £115,000 per year
<b>Local authorities</b>	None	No direct costs, but some possibly arising in time from Part 6 of the Bill if the local authority is a trade effluent discharger

	<b>Expenditure being made to support the delivery of the Hydro Nation agenda</b>	<b>Costs arising as a direct result of the Bill</b>
<b>Other bodies, individuals and businesses</b>		
Part 1: Development of water resources	None	No direct costs but designated bodies expected to align existing budgets with the Hydro Nation Agenda
Part 2: Control of water abstraction	None	Costs of applying will be determined by the procedures set down in regulations and will be set out in a Business Regulatory Impact Assessment that will accompany those regulations  Costs of complying with any conditions that Ministers attach to their approval will vary on a case by case basis
Part 3: Scottish Water's functions	£44m investment over the next three years, primarily in renewable energy	The £44m investment will deliver the new functions imposed by this Part of the Bill.
Part 4: Raw water quality	None	Scottish Water's costs for visiting a drinking water catchment, taking and analysing samples ranges from £50k–£200k annual depending on the size of the catchment  Scottish Water has budgeted to spend £1.2m per year entering into agreements with landowners within 7 catchments in the period to 2015.

	<b>Expenditure being made to support the delivery of the Hydro Nation agenda</b>	<b>Costs arising as a direct result of the Bill</b>
<b>Other bodies, individuals and businesses (contd.)</b>		
Part 5: Non-domestic services	None	Costs on landlords to notify licensed providers on change of occupancy estimated to total between £90k and £250k per year.
Part 6: sewerage network	None	Costs on businesses of meeting tighter trade effluent discharge consents cannot be estimated at this time and will vary depending on the substance to be treated and the volumes being discharged.  Costs on Scottish Water of undertaking pro-active catchment inspection and advisory/enforcement work with dischargers to the network estimated to be in the region of £1m per annum
Part 7: Water shortage orders	None	None

---

## **SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE**

151. On 27 June 2012, the Cabinet Secretary for Infrastructure and Capital Investment (Alex Neil MSP) made the following statement:

“In my view, the provisions of the Water Resources (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

**PRESIDING OFFICER'S STATEMENT ON LEGISLATIVE  
COMPETENCE**

152. On 26 June 2012, the Presiding Officer (Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Water Resources (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”



*These documents relate to the Water Resources (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 27 June 2012*

# **WATER RESOURCES (SCOTLAND) BILL**

## **EXPLANATORY NOTES**

### **(AND OTHER ACCOMPANYING DOCUMENTS)**

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2012.

Applications for reproduction should be made in writing to the Information Policy Team, Office of the Queen's Printer for Scotland, Admail ADM4058, Edinburgh, EH1 1NG, or by e-mail to: [licensing@oqps.gov.uk](mailto:licensing@oqps.gov.uk).

OQPS administers the copyright on behalf of the Scottish Parliamentary Corporate Body

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by APS Group Scotland.

ISBN 978-1-4061-9251-3