

# **WATER RESOURCES (SCOTLAND) BILL**

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## **POLICY MEMORANDUM**

### **INTRODUCTION**

1. 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 9.3.3(c) of the Parliament's Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 15–EN.

### **OVERVIEW OF THE BILL**

#### **Policy objectives**

2. 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.

3. 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 8 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.

## **Consultation**

4. There have been two public consultation exercises. The first commenced in December 2010 and the second in February 2012, which have led to the development of the Bill and the Hydro Nation programme of work.

5. The first consultation, called “Building a Hydro Nation” ran for 12 weeks, from December 2010 until March 2011, inviting comments on the ideas. The consultation paper is available at: <http://www.scotland.gov.uk/Publications/2010/12/14111932/0>. The responses to the consultation and analysis of results are available at: <http://www.scotland.gov.uk/Topics/Business-Industry/waterindustryscot/publications/BNHAnalysisReport>.

6. This consultation sought views on giving Scottish Water new functions and how its development could be financed. Consultees were also invited to respond about areas of the law they considered were in need of updating. In general, there was support for developing Scotland as a Hydro Nation, agreement that Scottish Water was a public sector success story, and that it could be challenged to do more, for example in developing its commercial activities, but that core services should not be affected by the taking on of additional functions. Suggestions were made for the law to be updated, in particular the framework for managing water shortages, and the control of discharges of certain substances.

7. The First Minister announced the intention to legislate in this area in the Programme for Government in September 2011. Detailed legislative proposals were drawn up and a 6 week consultation exercise on the publication “Scotland the Hydro Nation, Prospectus and Proposals for Legislation” was undertaken. In the prospectus part of the document, the Government described the programme of work that it was putting in place to develop what it described as the Hydro Nation agenda. It made clear that these were initial steps in a long term and ambitious process. In addition to inviting comments on the document, officials undertook a range of meetings and workshops to involve those with an interest in the water industry, the academic sector, businesses and interested members of the public. The consultation paper can be viewed at: <http://www.scotland.gov.uk/Publications/2012/02/9536>. The summary of responses to the consultation can be viewed at: <http://www.scotland.gov.uk/Publications/2012/06/7452>.

8. A wide range of stakeholders responded to both consultations, over 100 responses were received in total. Respondents included public bodies, businesses and their industry

representatives, environmental NGOs and private individuals. For the second consultation on “Scotland the Hydro Nation, Prospectus and Proposals for Legislation” 3 public meetings were held and a number of meetings arranged on request or by invitation. Given the open nature of the consultation a qualitative summary was drafted, highlighting the main comments received. There was strong support for the vision set out in the document, the importance of the water resource to Scotland’s continuing prosperity, and the key proposal of developing the value of Scotland’s water resources. Consultees supported the continuation of Scottish Water in the public sector. Crucially, that support was tempered with a consistent view that delivery of Scottish Water’s core functions should not be compromised by new responsibilities in legislation or through the pursuit of the Hydro Nation agenda. Customers in Scotland should be protected from any financial risk and suffer no fall in quality of service as a result of the broadening agenda. The Prospectus set out that protecting core functions remains as a principle and that was clearly supported.

9. In addition, the concept of value in relation to Scotland’s water resources and assets attracted comment from stakeholders. While the pursuit of economic value was clearly supported, maximising social and environmental value was also seen as a key priority by consultees. Consultees considered it important to ensure that in building a Hydro Nation, Scotland ensures that sustainable development is central to the programme, and that customer interests remain a priority. The Scottish Government will continue to engage with stakeholders during the Bill’s passage through the legislative process and beyond. The Hydro Nation agenda is a long term programme of work which will require continuing collaboration between key players in order to succeed.

## **Background**

10. In Scotland, public drinking water and sewerage services are provided by Scottish Water, a public sector corporation, which is accountable to the Scottish Ministers and through Ministers to the Scottish Parliament. Scottish Water operates within a regulatory framework established by the Scottish Parliament in which Scottish Ministers, acting on behalf of the people of Scotland, set the objectives for the industry. The regulatory process ensures that these are delivered at lowest reasonable cost to customers. Key players in this regulatory framework are Scottish Water’s economic regulator, the Water Industry Commission for Scotland; the Drinking Water Quality Regulator; the Scottish Environment Protection Agency; the customer representative body Consumer Focus Scotland; and the Scottish Public Services Ombudsman for the investigation of complaints.

11. The role of the Scottish Ministers and their officials is to manage the relationship with Scottish Water and its regulators within the statutory framework established by the Scottish Parliament. The Scottish Ministers set the objectives for the industry (and the principles that should underpin charges). More information can be found on the Scottish Government’s website: [www.scotland.gov.uk/Topics/Business-Industry/waterindustryscot](http://www.scotland.gov.uk/Topics/Business-Industry/waterindustryscot).

12. Scottish Water provides clean safe drinking water to 2.2 million households and 130,000 business customers in Scotland. Every day it supplies 1.3 billion litres of treated drinking water and takes away nearly 1 billion litres of wastewater from customers’ properties and treats it carefully before returning it safely to the environment.

13. The Water Industry Commission for Scotland (WICS) has the statutory duty to determine price limits for Scottish Water based on the lowest reasonable cost of achieving Ministers' objectives for the water industry. There is a competitive market for the provision of retail services (billing, collection, customer management etc.) to non-domestic customers in Scotland. All retailers must be licensed by WICS and a list of licensed providers is available from its website. Scottish Water is the wholesale provider to that market.

14. The Drinking Water Quality Regulator for Scotland (DWQR) is responsible for monitoring and confirming that the drinking water supplied by Scottish Water through the public water mains system meets the requirements of the drinking water quality regulations and is safe to drink. DWQR also advises Ministers on the delivery of and the need for future investment in drinking water quality.

15. The Scottish Environment Protection Agency (SEPA) is Scotland's environmental regulator. Their main role is to protect and improve the environment and as part of this, they have a responsibility to monitor Scottish Water's discharges to ensure they meet environmental requirements. SEPA also advises Ministers on the delivery of and the need for future investment in environmental improvements.

16. Consumer Focus Scotland (CFS) is the statutory organisation which campaigns for a fair deal for consumers in Scotland. CFS is the trading name of the Scottish Consumer Council, which is itself a territorial committee of the National Consumer Council.

## **Current law**

17. The powers and duties associated with the stewardship of the water environment and the management of the water industry in Scotland are primarily contained within 5 pieces of primary legislation, these being:

- **the Sewerage (Scotland) Act 1968**, which sets out Scottish Waters functions, duties and powers in relation to sewerage and drainage;
- **the Water (Scotland) Act 1980**, which sets out Scottish Water's functions, duties and powers in relation to water supply;
- **the Water Industry (Scotland) Act 2002**, which established Scottish Water, DWQR, the Customer Consultation Panels and the domestic charging regime;
- **the Water Environment Water and Water Services (Scotland) Act 2003**, which transposed the European Water Framework Directive, aiming to protect and where required, improve the management of the water environment; and updated the law in relation to the provision of water and sewerage services.
- **the Water Services etc. (Scotland) Act 2005**, which strengthened economic regulation by establishing the WICS, strengthened customer representation and introduced retail competition for non-domestic customers.

## **THE BILL PART BY PART**

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

#### *Policy objectives*

18. Part 1 of the Bill places a new duty on the Scottish Ministers to take such reasonable steps as they consider appropriate to ensure the value of Scotland's water resources is developed through the Hydro Nation programme. It sets out those public bodies which are expected to play a key role (Scottish Enterprise, Highlands & Islands Enterprise, Scottish Environment Protection Agency (SEPA), Scottish Water and Scottish Natural Heritage). It also gives Ministers powers to direct those bodies in this regard, powers to alter the list of key players, and requires Ministers to report to the Parliament after 3 years on how they have fulfilled their obligations under the duty.

19. The new duty is designed to create an explicit focus for the Scottish Ministers on Scotland's water resources and their potential and therefore the continuing development of the Hydro Nation programme. Ministers will be required to act to bring together all the key participants in this agenda from the many sectors who can contribute. The Hydro Nation programme of work recognises the breadth of knowledge and experience that exists in Scotland, and the duty will ensure that Ministers consider how that could be fully coordinated and made increasingly effective to the greater benefit of the people of Scotland.

#### *Alternative approaches*

20. The Scottish Ministers carefully considered the extent to which they could develop the Hydro Nation Programme through non-legislative means. They concluded that this would not give the structure they required or the impetus on other bodies to engage. They therefore rejected this option. The provisions highlight for the first time in a statutory context the concept of the value of the water resources, and working to increase that value. However a number of elements of the Hydro Nation agenda will take place under non-statutory frameworks, such as a Hydro Nation Forum, Centre of Expertise in Water and the Hydro Nation International Development programme. These will be developed in tandem and subsequent to the Bill. Placing the Hydro Nation duty on Ministers in the Bill gives significant weight and impetus to the agenda, and in particular the duty to report to the Parliament (after 3 years) will act as a key driver to taking action and ensuring collaboration.

#### *Consultation*

21. There was strong support in responses to both consultation exercises for developing Scotland as a Hydro Nation and that with its abundant water resources, Scotland had a valuable asset that was likely to become increasingly important and attractive as more areas of the world suffer water stress in future. There was also recognition that the Hydro Nation programme of work would include both legislative and non-legislative activity and collaboration across sectors and organisations.

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

### *Policy objectives*

22. The Bill introduces a new framework to govern the abstraction of water over a specified threshold. Applicants will be required to seek Ministerial approval of their proposals to abstract. Existing abstractions, and certain types of abstraction will be exempt from the regime, for example the abstractions that Scottish Water makes in exercise of its core functions; abstractions of water for use in generating electricity by hydro-power; and abstractions for the purpose of irrigating agricultural land.

23. The application process will be separate from the Controlled Activities Regulations (CAR) licensing regime that SEPA operates, where the impact on the environment of the proposed abstraction is considered. In future applications which fall within the eligibility criteria will need Ministerial approval, as well as a CAR licence to proceed.

24. Ministers consider that future years will see significant changes in the economic factors affecting the use and management of water resources on a global level. Climate change, population growth and movement, urbanisation and industrialisation are all relevant and will change our view of Scotland's valuable water resource. These factors are not easily taken account of in the present abstraction regime or the planning framework. Ministers will wish to develop a view as to whether the overall water resources of Scotland are being used to the best advantage of Scotland's people. It might therefore be that they would have a longer term and wider view of the merits of any large scale abstraction which related to the end use of water outside Scotland, which although environmentally sustainable, did not properly take account of the longer term view of the value of that resource and the needs of indigenous economic activity and growth. Similarly, they may use the new powers to consider competing applications relating to one water body or with reference to the overall availability of water resources across Scotland.

### *Alternative approaches*

25. The proposed new Ministerial consent for large scale water abstraction in Scotland will protect these precious resources for the benefit of the people of Scotland. When an application is made for a Controlled Activities Licence for an abstraction, SEPA looks almost exclusively at the environmental impact of the abstraction, in keeping with their role as the environmental regulator. The Scottish Government is seeking to ensure that when a large scale abstraction is proposed, a decision is made which looks beyond the environmental impact and takes into account the broader impact of that abstraction.

### *Consultation*

26. This proposal developed at a late stage in the Bill development process, as a result of further investigation into the issue of water ownership in Scotland, and how best to ensure that maximum value is made of this resource for the people of Scotland. During the summer recess, the intention is to engage further with stakeholders including large water abstractors to explain the policy intention and answer questions.

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

#### *Policy objectives*

27. Part 3 of the Bill is concerned with Scottish Water's functions and its exercise of those functions. The "Building a Hydro Nation" consultation set out the potential for Scottish Water to develop commercially, to use its assets to promote renewable generation and generally to support the Hydro Nation agenda. These proposals received strong support in the consultation responses. The Scottish Government considers that Scottish Water's considerable potential in these areas should be encouraged and recognised in legislation. Consequently the Bill gives Scottish Water new duties to develop the value of its assets and to promote the use of its assets for the generation of renewable energy. While Scottish Water is expected to be proactive and dynamic in seeking opportunities, the Bill includes the safeguard that these activities must not undermine the delivery of Scottish Water's core water and sewerage functions.

28. The existing statutory framework ensures that Scottish Water is almost wholly focused on the delivery of its core water and sewerage services. It does not envisage Scottish Water undertaking significant activities beyond these services. A consequence of the current framework is that all of the functions of Scottish Water under any enactment, other than the exercise of its general powers under section 25 of the Water Industry (Scotland) Act 2002, are defined as core functions. The Scottish Government considers that, in order to protect the customers who receive the core services, the additional functions the Bill will bestow on Scottish Water should not be classified as "core functions" and the Bill therefore distinguishes between Scottish Water's water and sewerage functions and the additional functions set out above. The Bill also provides clarity and certainty over the powers Scottish Water has to operate beyond its core functions.

29. The Water Industry (Scotland) Act 2002 provides for Scottish Ministers to make grants or lend to Scottish Water, and for Scottish Water to borrow from any third party. The Water Services etc. (Scotland) Act 2005 provides for Scottish Ministers to make grants or lend to Scottish Water's non-domestic retail business undertaking, Business Stream, but does not provide for Business Stream to be able to borrow from a third party. Scottish Water set up Business Stream as a wholly owned subsidiary but there are no powers for Scottish Ministers to lend to any other subsidiary of Scottish Water. If Ministers wished to make such lending available, for instance to support investment in renewable energy infrastructure on a commercial basis, that lending would have to be routed through Scottish Water. This is administratively inefficient and it potentially exposes water and sewerage customers to commercial risk, a concept which was not supported by responses to the "Building a Hydro Nation" consultation. The Bill therefore provides for Scottish Ministers to have powers to make grants or lend to Scottish Water and all its subsidiaries. For consistency, Business Stream is also provided with the power to borrow from a third party.

#### *Alternative approaches*

30. As Scottish Water is subject to a statutory framework, the only way to alter its powers or functions is by amending that legal framework. During the "Building a Hydro Nation" consultation exercise, comments were invited on giving Scottish Water additional functions and how these might be delivered (through Ministers' powers of direction, through extending Scottish Water's functions, or having a new legislative framework). Amongst the respondents

there was a strong preference for a separate legislative framework for any new functions that Scottish Water is given.

#### *Consultation*

31. As set out above, there was a strong preference amongst consultees for a separate legislative provision to separate additional functions for Scottish Water from its “core” functions (the provision of water and sewerage services). In response to the second consultation exercise, respondents stressed that clarity was needed on what is or is not a core function, that any new structural or lending provisions must be transparent, and that any changes should have due regard to ensuring the fair competitive nature of the market and to the existing hydro power generation assets and operations

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

#### *Policy objectives*

32. The policy objective of this Part of the Bill is to seek to safeguard and improve where possible the quality of raw water (that is, unprocessed drinking water in a catchment that Scottish Water is entitled to take for use in the supply of water for human consumption). This is achieved by giving Scottish Water powers to enter and inspect premises for the purposes of monitoring the quality or finding the source of pollution of the raw water. In addition, Scottish Water may enter into agreements with owners or occupiers of any land, or a local authority, to undertake works to prevent the deterioration of water quality; or to reduce the amount of treatment the water requires in order to be wholesome. The policy intention is to allow for a more proactive approach to be used within a catchment, with land owners, farmers, SEPA and Scottish Water working together.

#### *Alternative approaches*

33. An alternative approach would be to use collaborative working, without updating the law. This option was rejected as it was felt the Bill provided the opportunity for the law to be updated to reflect more modern approaches, and that this combined with joint working amongst Scottish Water, SEPA and land owners or tenants, would produce a more effective result.

#### *Consultation*

34. In “Scotland the Hydro Nation, Prospectus and Proposals for Legislation”, comments were invited on the proposal that Scottish Water could have powers to access land that forms part of the water catchment and to test the raw water. This was widely welcomed by respondents. A need for Scottish Water and SEPA to co-ordinate and co-operate to avoid inefficient duplication during implementation was highlighted. Also, it was commented that in granting Scottish Water additional access powers, the rights of land owners must be protected.

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

#### *Policy objectives*

35. Under the framework set up in the Water Services etc. (Scotland) Act 2005, non-domestic customers receive water and sewerage services from their chosen licensed provider. A number of licensed providers operate in a competitive market in Scotland and supply water and sewerage

services to the private, public and voluntary sectors. This market is comparatively new within Scotland and as it has matured a number of areas of detailed operation need to be addressed to ensure that the market is operating efficiently and that those receiving water and sewerage services pay for them.

36. Licensed providers may inherit customers from another provider, either because a gap site has been identified and allocated to them or because another licensed provider has failed and its customers are reallocated amongst the remaining providers. The customers would be in receipt of water and sewerage services but would not have signed a contract with the new licensed provider. However, as these customers are receiving a service, licensed providers should be able to demand and recover charges from them. This is clarified in the Bill. To aid further the effective functioning of the market, the Bill introduces a requirement on landlords to inform the relevant licensed provider when there is a change in occupancy in their property. The intention is to encourage landlords to maintain communication with a licensed provider when there is a change in the tenancy, in much the same way as happens with other utilities.

#### *Alternative approaches*

37. Consideration was given as to whether the desired changes could be achieved using market mechanisms such as the market codes and license conditions issued by the Water Industry Commission for Scotland that all licensed providers must comply with. However it was concluded that such mechanisms could not provide the certainty that a statutory underpinning can provide, nor could such mechanisms require landlords to notify licensed providers when there is a change in tenancy.

#### *Consultation*

38. In response to “Scotland the Hydro Nation, Prospectus and Proposals for Legislation” the Water Industry Commission for Scotland and Business Stream proposed that, in order to promote the efficient operation of the market, there should be a requirement on landlords to inform the relevant licensed provider when there is a change in occupancy in the property. This proposal has been incorporated into the Bill.

### **Part 6: Sewerage network**

#### *Policy objectives*

39. The policy intention is to restrict inputs into the sewer which can cause harm to the water environment and can be costly and difficult to remove. “Priority substances” are substances which are listed in a European Directive (2000/60/EC) as being of particular concern for the water environment. The Bill provides that trade effluent discharge licences issued by Scottish Water can include restrictions on priority substances.

40. Fats, oils and greases can interfere with the flow of the contents of the sewer, cause blockages and require repairs to be made to the network. The Bill creates a specific offence for people on trade premises to pass fats, oils or greases into the sewer network. The policy intention is to encourage traders to use proper disposal methods and act responsibly, with enforcement action of a fine or imprisonment (or both) available to the court.

41. Scottish Water will be granted powers to enter land or non-domestic properties for the purposes of obtaining samples or monitoring what is being passed to the sewer. It will also be able to install monitoring, testing or sampling equipment in order to facilitate this work. This is to enable a more proactive approach to be taken to managing the flows into the sewerage system.

42. Private sewage treatment works, such as community septic tanks, are facilities where more than one owner discharges into them. These are more common in rural areas, and around 5% of the population use septic tanks. The Bill aims to make it easier for the owners to maintain and empty such shared assets as required to keep them functioning and in good order, by allowing owners to arrange for works to be undertaken without the consent of all co-owners and to recover the cost from the owners.

#### *Alternative approaches*

43. An alternative approach would be to seek voluntary co-operation, Scottish Water already runs campaigns to highlight the problems caused to the sewer network by fats, oils and greases for example, and asks traders to dispose of waste responsibly. In order to meet the policy objective and back up the awareness raising and collaborative work, changes to the law in this area are also required, so that enforcement action could be taken if necessary. On shared septic tanks, there was a suggestion by respondees to both consultations that Scottish Water could take ownership and maintain them, this was rejected as it impacted on individual property rights.

#### *Consultation*

44. Some respondents to the “Building a Hydro Nation” consultation suggested more could be done to update the law in relation to prescribed substances, and in the subsequent consultation “Scotland the Hydro Nation, Prospectus and Proposals for Legislation” there was broad support from respondents for this proposal, which is expected to be beneficial to the environment. On shared septic tanks, there was a strong welcome for the principle of resolving any maintenance issues before an asset failed (and could cause pollution). Some suggested that the proposal might go further and sought the adoption of some septic tanks by Scottish Water in extreme circumstances, although this was rejected as impacting on individual property rights.

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

#### *Policy objectives*

45. The policy intention is to update the law in relation to the management of interruptions to the public water supply. This is to provide a regime where action can be stepped up as necessary in response to the circumstances, initially by Scottish Water seeking voluntary co-operation from consumers to reduce their demand through issuing advice on water saving measures, but this can be escalated to enforcement action if required. A more streamlined process than is possible under current provisions is proposed, with the aim that Scottish Water, SEPA and Scottish Ministers can react swiftly and in a proportionate way to temporary water shortages. The policy intention to update the term “drought order” to “water shortage order” is to reflect that interruptions to the public water supply can be caused by a number of factors, not solely by drought. The new proposals reflect the policy intention that it is prudent to make preparations for scenarios which are rare, but when they do occur, procedures and timescales for action should be set out clearly.

### *Alternative approaches*

46. Legislation is required to achieve the policy objective of updating the law in this area.

### *Consultation*

47. In the “Building a Hydro Nation” consultation, many respondents welcomed the proposal to modernise the legislation on drought orders and update the provisions contained in section 69 of the Water (Scotland) Act 1980. This was confirmed by responses to the more detailed proposals that were consulted on in “Scotland the Hydro Nation, Prospectus and Proposals for Legislation”. Many respondents welcomed the updating and clarity new provisions would bring. Comments were received about ensuring that in implementing these new orders, care was taken to avoid perverse effects such as increased air pollution or biohazard risks when restricting water use. It was warned that care should be taken to ensure equity of approach to domestic and non domestic water users in the design of these orders, and the draft provisions were adjusted in light of these comments.

## **Part 8: General provisions**

48. This Part contains general regulation making powers for the Scottish Ministers, and defines the main legislation referred to throughout the Bill. There are consequential repeals in schedule 3, including the minor repeal of 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. The policy intention is to reduce the administrative burden of annual reporting, when this information is made available through the River Basin Management Plan reporting duties. This Part also provides for the commencement of the Bill.

## **EFFECT ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.**

### **Equal opportunities**

49. The Bill’s provisions do not discriminate on the basis of age, gender, race, religion, disability or sexual orientation.

### **Human rights**

#### *Control of water abstractions*

50. Although the imposition of a requirement for Ministerial approval for abstractions from the water environment, and the possibility of conditions being placed upon that approval, will constitute an interference with the peaceful enjoyment of possessions that is liable to engage Article 1 of Protocol 1 to the European Convention of Human Rights, such interference is considered to be justifiable in the general interest and proportionate. The primary purpose of the Ministerial approval regime is to allow Ministers to manage the use of a national resource in the general interest. The regime allows Ministers to ensure that large-scale abstractions from the water environment in Scotland are only carried out where they are sustainable and where the use of the resource is in the general interest of the people of Scotland, with Ministers required to consider both adverse impacts and social and economic benefits. The provisions are considered

to strike a fair balance between the demands of the general interest and the interests of the individuals concerned. They are proportionate in that the Ministerial approval requirement only applies to large-scale abstractions above the specified threshold.

#### *Powers of entry*

51. Parts 4 and 6 of the Bill give Scottish Water certain new powers of entry. The exercise of such powers of entry could potentially interfere with an individual's peaceful enjoyment of his or her possessions and thus with that person's rights under Article 1 of Protocol 1 to the ECHR. However, the powers are justified in the general interest and proportionate. The additional powers of entry are for the legitimate aims of protecting and improving the quality of public drinking water and reducing the costs incurred by Scottish Water in treating such water to make it wholesome – costs which are ultimately met by Scottish Water's customers, representing most households in Scotland. The supplementary powers of entry in Part 6 of the Bill are for the legitimate aim of monitoring and investigating the passing of matter into the sewer, something which, if prohibited matter is passed, can result in costly repairs to the sewer being required – costs which again are ultimately borne by Scottish Water's customers. Any interference is likely to be fairly minor because entering premises to monitor water quality or the passing of matter into the sewer is likely to be temporary and unlikely to be particularly invasive. Entry is subject to at least 24 hours notice unless the premises are unoccupied and, if entry is refused, can only be authorised by a sheriff granting a warrant.

#### *Private sewage treatment works*

52. Part 6 of the Bill gives any common owner of private sewage treatment works, such as septic tanks, powers in certain circumstances to carry out works without the consent of the other common owners, and entitles the owner who has carried out the works to recover the cost from the other owners. To the extent that works may be carried out without the consent of all co-owners of the private works, the exercise of such powers may constitute an interference with the rights of owners to the peaceful enjoyment of their possessions under Article 1 of Protocol 1 to the ECHR. However, the power to carry out works without the consent of all co-owners of private sewage treatment works can only be exercised where and to the extent that the works are necessary to comply with any applicable conditions of the relevant authorisation under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209). Those Regulations concern the protection of the water environment. It is in the general interest to ensure that works which are necessary to comply with the conditions of an authorisation under the 2011 Regulations and thereby protect the water environment are not blocked by certain owners of common property. All common owners of a private sewage treatment works commit a criminal offence if they fail to carry out works to it that are necessary to comply with the conditions of an authorisation under the 2011 Regulations. Allowing a co-owner who does wish to comply with his or her obligations under the 2011 Regulations to carry out works without the consent of certain owners who do not, is considered to be proportionate in light of the general interest in protecting the water environment and in ensuring observance of the law.

#### *Water shortage orders*

53. Part 7 of the Bill makes provision for Scottish Water to apply for, and the Scottish Ministers to make, water shortage orders. Water shortage orders may, among other things, authorise Scottish Water to abstract water from any source and discharge it to any place. They may also authorise Scottish Water to restrict or prohibit abstractions by any person. They may

also impose water saving measures on any person or group of people. All such measures could conceivably engage Article 1 of Protocol 1 to the ECHR. However, all such measures will only be made in the circumstances of a serious deficiency or threatened deficiency of water supplies. It is in the general interest that steps are taken in such circumstances to address such a deficiency and ensure continuity of water supplies. Compensation is payable for any loss or damage sustained as a result of the abstraction or discharge of water by Scottish Water in accordance with a water shortage order, or a restriction or prohibition on the abstraction of water imposed under such an order. Given that compensation will be paid for any loss or damage sustained, it is thought that a fair balance has been struck between community and individual interests. Compensation is not payable for loss or damage sustained as a result of the imposition of a water saving measure, but given the non-essential nature of the uses that may be temporarily prohibited by water saving measures, and the significant community interest in ensuring continuity of water supplies for other uses, it is thought that a fair balance has been struck between community and individual interests.

### **Island communities**

54. The Bill has no differential impact upon island communities. The provisions of the Bill apply equally to all communities in Scotland

### **Local government**

55. Local authorities are not named in the Bill or given any specific role or responsibility by the Bill. Part 4 of the Bill provides that Scottish Water may enter into agreements with them for the carrying out of activities for the purpose of protecting or improving raw water quality, but such agreements are voluntary and whether or not to enter into any particular agreement that Scottish Water may propose is a matter for the local authority concerned,

56. Some local authorities may hold trade effluent consents from Scottish Water, which enable them to discharge trade effluent to the sewer. The provisions within the Bill clarify that Scottish Water can include conditions about priority substances in trade effluent consents.

### **Sustainable development**

57. On the whole, the provisions are expected to have largely positive environmental effects and complement existing plans, strategies and measures. The Scottish Government has undertaken a Strategic Environmental Assessment (SEA) of “Scotland The Hydro Nation, Prospectus and Proposals for Legislation” available at: <http://www.scotland.gov.uk/Publications/2012/06/4338>. This highlights the largely positive impacts of both the Bill and the wider Hydro Nation programme it supports. The Bill provisions will help ensure the availability and quality of Scotland’s water resources in the future, through protecting water supply sources and helping Scotland adapt to the likely effects of climate change. The provisions further seek to support sustainable development by protecting the public sewerage network, maintaining private sewerage arrangements and by modernising the water shortage order process. Benefits for biodiversity and flora and fauna, improving energy efficiencies and reducing pollution risk are also considered likely. The Bill includes specific reference to sustainability in the duty that is placed on Ministers to develop the value of

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Scotland's water resources and the definition of value very clearly includes economic and other benefits.



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## **POLICY MEMORANDUM**

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