



The Scottish Parliament
Pàrlamaid na h-Alba

INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

AGENDA

18th Meeting, 2012 (Session 4)

Wednesday 31 October 2012

The Committee will meet at 10.00 am in Committee Room 6.

1. **Water Resources (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Chris Wallace, Director of Communications, and Belinda Oldfield, Regulation General Manager, Scottish Water;

and then from—

Alan Sutherland, Chief Executive, and John Simpson, Director of Analysis, Water Industry Commission for Scotland.

2. **Subordinate legislation:** The Committee will consider the following negative instrument—

Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Amendment Regulations 2012 SSI/2012/258.

3. **Appointment of European Union Reporter:** The Committee will appoint a member to serve as its European Union Reporter.

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The papers for this meeting are as follows—

Agenda item 1

PRIVATE PAPER

ICI/S4/12/18/1 (P)

Written evidence

ICI/S4/12/18/2

Agenda item 2

Paper from the Clerk

ICI/S4/12/18/3

[The Housing \(Scotland\) Act 2001 \(Assistance to Registered Social Landlords and Other Persons\) \(Grants\) Amendment Regulations 2012](#)

Agenda item 3

Paper from the Clerk

ICI/S4/12/18/4

Infrastructure and Capital Investment Committee

18th Meeting, 2012 (Session 4), Wednesday, 31 October 2012

Water Resources (Scotland) Bill - Stage 1

Written evidence

The Committee has received written evidence on its scrutiny of the Water Resources (Scotland) Bill at Stage 1 from the following organisations, in support of their oral evidence at this meeting.

- Scottish Water
- Water Industry Commission for Scotland

WRITTEN EVIDENCE FROM SCOTTISH WATER

Overview

Scottish Water welcomes the opportunity to provide views and comments to the Infrastructure and Capital Investment Committee on the Water Resources (Scotland) Bill.

Overall, Scottish Water welcomes the proposals that are laid before the Scottish Parliament in the Bill. Specifically we see that Parts 1 and 2 provide a strong statutory basis for developing Scotland's water resources in the interests of Scotland. Scottish Water intends to play its part in the future development of the Hydro Nation agenda, and the Bill will enable us to fully take on this role.

We welcome the proposals to modernise some existing areas of statute relating to the management of water shortages. The proposals are progressive as they link the requirement to provide drinking water supplies and protect the water environment through practical and flexible statutory arrangements.

The clarification of Scottish Water's core functions will provide a useful separation of our activities and ensure that services to water and wastewater customers are maintained at the highest levels, whilst other business interests are allowed to develop. Scottish Water is fully committed to implementing Scottish Ministers' wider Hydro Nation agenda through development of our assets, investment in renewable energy and developing new business ventures.

Part 5 is welcomed as it will ensure that the commercial retail market is able to operate efficiently in Scotland.

We welcome the proposals in Parts 4 and 6 of the Bill, as these additions provide the missing part of the legislative framework that will enable Scottish Water to actively engage in catchment management in rural and urban drainage catchments. We see the move towards catchment management as a better way to manage diffuse inputs of pollution. While we see the powers in Parts 4 and 6 as discretionary and to be used most judiciously, we favour their inclusion in statute as all powers relating to core activities benefit from this.

Detailed Response

Q1 - Section 1 of the Bill proposes placing a duty on Scottish Ministers to take such reasonable steps as they consider appropriate to ensure the development of the value of Scotland's water resources. Do you consider these proposals to be sufficient to drive forward the delivery of the Scottish Government's aim of making Scotland a Hydro Nation?

We welcome the proposals to place this duty on Scottish Ministers. We see that the statutory requirement provides a clear basis for the aspirations of the Scottish Government to build a Hydro Nation.

Q2 - What are your views on the proposal that Scottish Ministers should be able to direct public bodies to participate in the development of water resources?

This proposal will help to ensure that public bodies take an active role in the Hydro Nation agenda. As such, we welcome this element of the Bill.

Q3 - Do you have any comments on the requirement for Scottish Ministers to report to the Scottish Parliament on these activities every three years? Is this sufficient to ensure that Scottish Ministers will be held accountable for meeting the duty placed upon them to ensure the development of Scotland's water resources?

Given that many of the aspirations under the Hydro Nation agenda are of a longer-term nature, a 3 year reporting period seems appropriate.

Q4 - In your view is the new licensing regime necessary and will it offer the desired benefit of ensuring that the value of the water resources of Scotland are maximised for the people of Scotland?

The proposed licensing regime will ensure that significant applications that result in water being taken for use outwith Scotland will come to the attention of Scottish Ministers directly. We welcome this approach and acknowledge the practical exemption in relation to abstractions that Scottish Water makes in relation to the core function of supplying drinking water to the people of Scotland.

Q5 – Is the threshold set in the Bill for defining large scale abstractions of greater than 10 megalitres of water per day appropriate?

We consider that the proposed threshold is appropriate.

Q6 - Is the list of possible purposes by which a large scale abstraction may be exempt from requiring Ministerial approval, such as where an abstraction is carried out for the purpose of generating electricity by hydro-power, appropriate?

We welcome the inclusion of exemptions, particularly in relation to Scottish Water's core functions.

Q7 - What are your views on Scottish Water being given specific powers to develop its assets and support the generation of renewable energy?

We welcome the inclusion of these clear powers within the Bill as they align our work with the wider Hydro Nation agenda and encourage innovation.

We are taking steps to generate renewable energy from our assets and we welcome the powers that will support the further development of this activity.

Q8 - Are you content that the definition of core powers will provide sufficient safeguards for core water and sewerage functions against risks incurred by Scottish Water in pursuing non-core functions?

We are content with definition of core powers proposed within the Bill. The creation of core functions sets down some clear principles of operation, namely: that customers for water and wastewater services are at the heart of our business; that the charges paid by customers are for services in relation to water and wastewater services; that all other activities require to be financed through alternative routes.

Q9 - Do you have any views about the proposals to give Scottish Water new powers of entry and inspection of premises (other than a house) in relation to the quality of raw water?

We welcome the proposal to introduce powers to allow Scottish Water to enter and inspect premises in relation to protecting raw water quality. We see these powers as being part of a package of arrangements that allow us to conduct catchment management to protect sources of drinking water and ensure that customers receive wholesome drinking water at reasonable cost (as required by the Water (Scotland) Act 1980).

Catchment management is concerned with identifying and reducing pollution at source, and working in partnership with land owners and land managers to find ways to manage these low levels of diffuse pollution.

The powers of entry are discretionary and we only intend to use these powers where we have evidence to suggest that catchment management might provide a sustainable solution to the protection of a drinking water source. Having the powers will avoid doubt about Scottish Water's role and activity on land; they will legitimise the activity of our catchment liaison officers on the ground. We see these arrangements as complementary to treatment methods that are available to us to ensure that customers receive the quality of water they are entitled to.

Q10 - Do you have any views on how the proposal allowing Scottish Water to enter into agreements with owners or occupiers of land to undertake works to prevent the deterioration of water quality will work in practice and whether this is necessary and/or appropriate?

We welcome the proposals in the Bill to allow Scottish Water to enter into agreements with land owners and occupiers to undertake measures on the ground.

We favour having the vital components of catchment management (entry to land and ability to enter into agreements with 3rd parties) laid out in statute, as this is consistent with other actions we take in relation to our core functions.

After finding sources of pollution, and the pathways that allow pollutants to enter drinking water sources, the next step is mitigation measures. Such measures could be education and awareness of best practice, through to implementation of new hard measures on the ground.

Q11 - Are the new duties to be placed on landlords appropriate and do they raise any concerns?

Scottish Water is the wholesaler of water to the commercial sector. In this capacity, we note that the retail market for water and wastewater services needs to operate efficiently and that the Licensed Providers must be able to collect revenue for water and wastewater services.

Placing new duties on landlords to inform their Licensed Provider of changes in occupancy ensures that bills can be correctly raised and charges collected. We support these changes as it will enable the retail market to operate efficiently. It will also ensure that all customers are contributing fairly to the costs of service provision.

Q12 - Do you have any comments on the proposed arrangements for the creation of a scheme setting out the terms and conditions under which a deemed contract for the provision of water is to exist?

Our view is that having a general set of terms and conditions that apply to all deemed contracts is appropriate and ensures that, where specific contracts do not exist, all parties are treated in the same manner. We agree that the Water Industry Commission for Scotland (WICS) should set this scheme out.

Q13 - Do you have any comments about the proposal granting Scottish Water powers of entry and inspection of land or non-domestic property in relation to passing substances and pollutants into the sewer network?

As noted in our answers to questions 9 and 10 above, we welcome the proposals to have powers of entry to investigate the passing of substances and pollutants directly to the sewer network.

Our reasons for supporting these proposals are that we need new and innovative ways of ensuring that substances that enter the public sewerage network can be monitored and traced, so that ultimately they can be managed.

In-line with our answers above, we believe catchment management can also be applied to the urban drainage environment. We see the proposed powers as discretionary powers that can be used in a catchment management context.

Tracing the sources of Priority Substances and other pollutants that enter the sewerage network may help address the inputs where loads are significant. Without the knowledge from the drainage catchment itself, we cannot take a catchment approach.

For example, a catchment approach could be applied where SEPA identifies that a water course is down-graded due to urban pollution. The new powers of entry would allow Scottish Water to investigate the sewer network inputs to the river, right up into the urban catchment. Where pollution is associated with the sewerage network, action could be taken to resolve the problem e.g. correcting cross-connections (which is enabled under the existing Sewerage (Scotland) Act 1968) or improving unsatisfactory discharges through our investment programme.

It should be noted that Scottish Water cannot act alone to control all inputs to what are effectively open systems, and that this approach would help identify operators within a catchment to support actions being taken. We believe this will help inform SEPA's river basin planning function.

The new powers of entry to investigate and trace pollution are welcomed as they are complementary to existing powers and allow Scottish Water to undertake urban catchment management. The benefit is improvements to the water environment, avoidance of costly end-of-pipe treatment and maintaining charges to customers at a sustainable level.

Q14 - Do you have any comments about the creation and enforcement of a new offence of passing, or permitting to be passed, fat, oil or grease into the public sewer network?

Blockages of the public sewer, caused by fats, oils and grease, require to be removed. The costs of doing so fall to Scottish Water customers. We welcome this proposal as it will provide a clear message to commercial premises that they must dispose of fats, oils and grease in an appropriate way.

We see these new powers as complementary to other powers under waste regulation, ensuring a full package of incentives and enforcement arrangements to encourage best practice for disposal of fats, oils and grease. The benefit will be that sewers should experience fewer blockages and that the fats, oils and greases are controlled at source.

Q15 - Do you have any comments on the proposal to allow any one proprietor to carry out works to private sewage treatment works, such as septic tanks, to maintain and empty these shared assets without having to secure the consent of the other owners?

We welcome the proposals to allow proprietors to initiate and take maintenance actions on privately owned sewerage system. These proposals close a gap in the existing legislative framework and will help owners who wish to undertake maintenance to take action.

Q16 - Are the proposals to create new water shortage and emergency water shortage orders proportionate and will they have the desired effect of dealing with temporary water shortages?

We welcome the proposals within the Bill as they provide a modern framework for the management of water shortages which is relevant to Scotland's situation.

Within Scotland, large-scale water shortages due to lack of rain are a rare event. However, localised shortages do occur on a fairly regular basis. (For instance, during the summer of 2012, mainland Scotland experienced lots of wet weather in May and June, but on the western isles there were localised water shortages as the weather was unusually dry.) The framework laid out within the Bill is flexible and will deal with both small scale and larger scale events and we welcome the emphasis on communications with water users as an essential step in the process.

Our view is that many water shortage events will not result in requests for Water Shortage Orders where Scottish Water is able to work with SEPA and local landowners to secure alternative supplies. However, where there are more serious shortages, or where 3rd party interests are significant, then a statutory framework with involvement of Scottish Ministers is an appropriate approach.

The approach to water saving measures seems appropriate and proportionate. We welcome the emphasis upon communication with those affected by water saving measures and whenever water shortages arise we will work with customers to make them aware of water saving measures.

Q17 - Do you have any comments on the estimated costs associated with the Bill?

We consider that there are few new costs arising for Scottish Water as a result of the Bill. Our comment is that the proposals within the Bill may enable us to be more efficient in the management of water and wastewater services.

We note, specifically in relation to having a legislative framework to support catchment management, that the Bill may allow us to avoid or minimise the increasing costs of “end-of-pipe” treatment.

WRITTEN EVIDENCE FROM THE WATER INDUSTRY COMMISSION FOR SCOTLAND

The Commission welcomes the proposals in the Water Resources (Scotland) Bill regarding non-household water and sewerage customers. In Scotland, non-household customers have been benefiting from the competitive retail services market since its opening in 2008. Two-thirds of these customers have already benefitted by switching supplier or renegotiating with their current supplier. Customers are seeing lower prices, better, more tailored services or, more often the case, a combination of both price and service.

The Bill's proposals will help ensure that non-household customers continue to benefit from the competitive market while offering additional protections by making provision for deemed contracts to exist between owner/tenants of non-household premises and a licensed provider for water and wastewater services, where no formal contract exists.

We agree that the contractual relationship between non-household customers and their licensed provider must be clear to both parties. The introduction of deemed contracts is a legal and administrative tool to ensure that the legal relationship between the licensed provider of water and wastewater services and non-household customers is clear.

A scheme that sets out the terms and conditions to be incorporated into any deemed contract will allow customers to take advantage of the market's existing customer protection measures, such as the default tariffs and service levels, as well as avoiding unnecessary duplication.

We also welcome the new provisions that would require landlords to notify licensed providers when the occupancy status of their property changes. Effective record management is vital to ensuring that charges can be collected effectively for the benefit of all water and wastewater customers. The licensed providers have told us that maintaining accurate information about non-household occupancy is one of the most difficult data issues for them.

Section 45 of the Floods Management Act 2010 in England requires household landlords to notify water companies with certain information about their tenants. We welcome the proposal to introduce a similar provision in the Bill for non-household landlords in Scotland. Such a provision would greatly assist licensed providers in Scotland when recovering charges as it would reduce the likelihood of 'gaps' in customer details. Such gaps can often result in tenants in rental premises receiving unexpected or backdated bills.

Based on the experiences of customers and licensed providers of the non-household market, we would recommend including an additional measure in the Bill that will help ensure that all customers who are receiving water and wastewater services contribute towards the cost of operating and maintaining the public water and sewerage network. This measure would be an assumption that each customer takes an equal share of the water and sewerage services from the supply in question in situations where:

- more than one customer is connected to the same supply; and
- individual meters have not been fitted that would allow each connected customer's consumption
- to be calculated separately; and
- there is no specific agreement otherwise.

At present, customers who are on a shared supply that is not metered in a way that allows the consumption for each of them to be calculated separately cannot be disconnected. This is because disconnection that would adversely affect another customer is prohibited. Non-household customers who are on shared supplies and refuse to pay are therefore subsidised for the services they use by those customers who do pay.

If such a provision was included in the Bill it would allow charges to be recovered from non-paying customers by allocating them an equal share of the total consumption. It should also incentivise non-household customers on shared supplies to adopt meters or reach an agreement with their neighbours about how the supply should be allocated between them.

Infrastructure and Capital Investment Committee

18th Meeting, 2012 (Session 4), Wednesday, 31 October 2012

Subordinate Legislation

Title of Instrument	Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Amendment Regulations 2012 SSI/2012/258
Type of Instruments	Negative
Laid Date	21 September 2012
Minister to attend the meeting	No
SSIs drawn to the Parliament's attention by Subordinate Legislation Committee	Yes
Reporting Deadline	5 November 2012

Background

1. The Housing (Scotland) Act 2001 ("the 2001 Act") gives the option for councils to take a more strategic role in the provision of housing, and management of the Development Funding programme for their area. It further allows Scottish Ministers to make Regulations in relation to:

- the purposes for which each grant scheme can be used;
- who is eligible to receive grants;
- the criteria local authorities must follow in considering whether to allocate financial assistance; and
- the terms and conditions under which financial assistance will be given.

2. Regulations made under the 2001 Act, 'the Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords And Other Persons) (Grants) Regulations 2004 ("the 2004 Regulations)', provide for specific types of grant assistance to be given by local authorities to persons including registered social landlords. The funding for this comes from the grants paid to the local authority by Scottish Ministers (unless the relevant offer of grant by the Scottish Ministers excludes their application). This includes grants made by

local authorities under the Transfer of Management of Development Funding arrangements (TMDF).

Purpose

3. These Regulations amend the 2004 Regulations and by replacing the provision for GRO for Owner Occupation ('GRO Grants') with provision for Partnership Support for Regeneration (PSR) grants. The GRO grants were those provided by local authorities to non-registered housing associations, housing trusts, or private developers for the building of houses in areas of limited housing in order to help meet local shortages. When making new PSR grants local authorities will now be required to follow a certain procedure and adhere to specific terms and conditions (set out under Schedule 2).

4. The Regulations further provide for saving in relation to GRO Grants that have been approved before these Regulations come into force. PSR grant may be made available to private developers, housing trusts and non-registered housing associations, to provide flats or houses for owner occupation in areas where they are in short supply.

5. In 2011, the Scottish Government started a competitive funding programme to finance new affordable housing developments, 'the Innovation and Investment Fund ('IIF') 2011/12', which was divided into several categories. These Regulations add IIF grants to the categories of grant assistance that may be provided by a local authority under the 2004 Regulations. They provide that IIF grant is only available to Registered Social Landlords and their subsidiaries. This is aimed to assist with the provision, improvement and maintenance of affordable housing.

6. In addition the Regulations amend aspects of the Housing Association Grant ('HAG') made to social landlords in relation to property upkeep and improvement. These grants were originally subject to conditions of good performance by landlords, a failure to comply with which would lead to the termination of the relevant project. The Housing (Scotland) Act 2010 removed the powers for Scottish Ministers to grade landlord performance, meaning that changes are needed to replace references to 'performance grading' in the 2004 Regulations. These Regulations therefore insert reference to documents such as a performance report published by the Scottish Housing Regulator or a report of an inquiry made by the Regulator.

7. No additional costs or administrative burdens are anticipated in relation to the implementation of the Regulations.

Consideration by the Subordinate Legislation Committee

8. The Subordinate Legislation Committee (SLC) drew the attention of the Parliament to this instrument on the grounds of a drafting error and a lack of clarity over a specific point. The 'defective' drafting relates to the part of the Regulations that is meant to provide for the procedure by which local authorities must follow in considering applications for IIF grants. However, the Subordinate Legislation Committee considered that the document itself refers only to how Scottish Ministers and COSLA will deal with applications for IIF

grants from local authorities themselves, rather than specifying how a document for a different purpose is to be given effect in the relevant circumstances. That Committee therefore feel there is a doubt as to whether the instrument “effectively makes any provision as to the procedure to be followed by local authorities, despite that being its apparent intention”.

9. The second point on which attention has been drawn relates to the procedures to be followed by a local authority in considering applications for PSR grants. This has been included under Schedule 1 (which inserts a new Schedule 2 into the 2004 Regulations), however, the Subordinate Legislation Committee suggest that as applicants would have, or be able to obtain, control of the development site, the provisions should be included in Part 3 of the Schedule, which relates to grant application eligibility, rather than in Part 4 as a procedural requirement.

Recommendation

10. A copy of the SSI and its accompanying documents are included with the papers.

11. The Committee is invited to consider any issues that it wishes to raise in reporting to the Parliament on this instrument.

12. In doing so, the Committee will wish to take into account the issues brought to its attention by the SLC which are referred to at paragraphs 8 and 9 above.

Steve Farrell
Clerk to the Committee
October 2012

Infrastructure and Capital Investment Committee

18th Meeting, 2012 (Session 4), Wednesday, 31 October 2012

Appointment of EU Reporter

1. The purpose of this paper is to elect a new EU Reporter, following the resignation from the Committee of the previous Reporter, Aileen McLeod.

The Scottish Parliament's European Strategy

2. On 9 December 2010, the Parliament agreed to the introduction of a Parliament-wide strategy for European Union engagement and scrutiny. The Strategy is available at—

<http://archive.scottish.parliament.uk/s3/committees/europe/reports-11/eur11-03.htm#annb>

3. The Strategy outlines the enhanced role of subject committees in early engagement and in the scrutiny of emerging EU legislative proposals. Subject committees will be responsible for appointing EU Reporters and for scrutinising EU proposals within their area.

The Role of the EU Reporter

4. The role of the EU Reporter is to act as champion for EU matters within the Committee. This will involve promoting the European dimension in the work of the Committee, taking the lead on EU early engagement and in developing relationships with the European Commission and European Parliament, leading the Committee's EU scrutiny work, promoting and speaking to European issues, highlighting the European dimension within policy debates and acting as a conduit between the Committee and the EERC.

5. In this way the Reporter will be invited to take forward the Committee's existing EU priorities. An update on the priorities was prepared by the former EU Reporter, Aileen McLeod, for the Committee's last meeting on 24 October.

Fact-finding trip to Brussels

6. The Clerk to the European and External Relations Committee is planning a trip to Brussels, which is proposed for Sunday 2 December and returning on Tuesday 4 December. The new EU Reporter would be invited to attend this trip.

7. The visit would include a formal dinner hosted by the European Commission, possibly on a Sunday evening. The following morning would be a general introduction to the European institutions, followed by, in the afternoon, breakout meetings for each Reporter in their subject area.

8. The Committee is invited to nominate a Member to act as EU Reporter for the Committee.

Steve Farrell
Clerk to the Committee
October 2012