



Environment and Rural Development Committee

21st Meeting, 2004

Wednesday 22 September 2004

The Committee will meet at 10.30 am in Committee Room 4.

1. **Water Services etc. (Scotland) Bill:** The Committee will take evidence at Stage 1 from—

Panel 1

Jim Lugton, Policy Officer, Scottish Council for Voluntary Organisations;

Trisha McAuley, Head of Corporate Resources, Scottish Consumer Council;

Panel 2

Ian Smith, Convener, Water Customer Consultation Panels;

Len Scoullar, Member – North West Water Customer Consultation Panel; and

Panel 3

Councillor Alison Hay, Argyll and Bute Council, COSLA;

Councillor Alan Kenney, Fife Council, COSLA;

James Thomson, Finance Policy Officer, COSLA.

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

the Plant Protection Products (Scotland) Amendment Regulations 2004, (SSI 2004/368); and

the Agricultural Subsidies (Appeals) (Scotland) Regulations 2004, (SSI 2004/381).

3. **Budget process 2005-06:** The Committee will consider its approach to Stage 2 of the 2005-06 budget process.

ERD/S2/04/21/A

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Clerk to the Committee
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The following papers are attached:

<p><u>Agenda Item 1</u></p> <p>Submission from the Scottish Council for Voluntary Organisations</p> <p>Submission from the Scottish Consumer Council</p> <p>Submission from Water Customer Consultation Panels</p> <p>Submission from COSLA</p> <p>Briefing paper from SPICe (<i>for members only</i>)</p>	<p>ERD/S2/04/21/1a</p> <p>ERD/S2/04/21/1b</p> <p>ERD/S2/04/21/1c</p> <p>ERD/S2/04/21/1d</p> <p>ERD/S2/04/21/1e</p>
<p><u>Agenda Item 2</u></p> <p>the Plant Protection Products (Scotland) Amendment Regulations 2004, (SSI 2004/368)</p> <p>the Agricultural Subsidies (Appeals) (Scotland) Regulations 2004, (SSI 2004/381)</p>	<p>ERD/S2/04/21/2a</p> <p>ERD/S2/04/21/2b</p>
<p><u>Agenda Item 3</u></p> <p>Paper from the Clerk</p>	<p>ERD/S2/04/21/3a</p>

SUBMISSION BY SCVO

The Scottish Council for Voluntary Organisations seeks to advance the values and interests shared by voluntary organisations by fostering co-operation, promoting best practice and delivering sustainable common services. We have 1200 organisational members and work with the network of local councils of voluntary services to reach many thousands more.

Background

SCVO first became aware that charities were suddenly being faced with water bills in the last quarter of 1997. Since then, SCVO has been involved with this issue on several levels:-

- Campaigning for action to end or reduce the impact of water charges on charities, including securing debates in the Scottish Parliament, the tabling of amendments and maintaining links to the Scottish media in presenting our case to the wider public, and in individual discussions with MSPs.
- Submitting evidence at every opportunity to committees of the Scottish Parliament to advance the case for exemption for charities from water charges, most recently earlier this year to the Finance Committee's review of Scottish Water
- Liaising with the former three water companies and Scottish Water on the resolution of individual cases, and promoting their wider understanding of charities and their operational context, with a view to influencing practice
- Providing a customised service to charities and voluntary organisations to help them minimise their water bills and to plan for the likely impact of such charges on their funding position and their relationship with their main funders
- Providing information to MSPs, trades unions, community groups, MPs and others on the debate and SCVO's policies, but also advising on individual cases they had come across.
- Working with the industry regulator in his affordability advisory group and more generally to keep him abreast of the issues as seen from the charitable and voluntary perspective.
- Working with other interested client groups on the core issues of affordability and the principle of eligibility for charging, particularly the small business sector and poverty groups working on the impact of charges for Band A and B Council tax paying households
- Working on the wider impact of changes to water charging such as the highly specific impact on care and nursing homes and associated Court cases, such as West of Scotland Water vs. Clydecare.

Reliefs

The success of SCVO's campaigning was seen in the delay in introducing charges in 1999-2000 and 2000-2001, and Ministers' introduction of a

charitable exemptions scheme in 2002-03, supported by a Hardship Fund for two years, the latter to have £1 million available for each of the two years.

In making their commitment to the scheme, the then Minister told the Parliament that it was specifically designed to meet the needs of the overwhelming majority of Scottish charities which were quite small in cash income terms. It was believed by the Scottish Executive that the £50,000 income ceiling for exemptions would lead to some 80% of charities and voluntary organisations qualifying for relief.

If this is the benchmark for the scheme's success, then it has failed quite badly.

The figures show that just over 5000 have qualified for relief. Scotland has some 50,000 voluntary organisations, of which 28,000 are recognised charities. This means that a very substantial number of charities have not qualified for relief, far fewer than the Minister believed would be the case.

The Hardship Fund similarly has had little impact with only £63,000 being issued to 40 organisations.

SCVO has provided advice to over 3,700 cases, mostly via initial coverage of the issue in Third Force News and providing the services of a member of staff.

On August 31st this year at the conference on affordability Ross Finnie announced that the current scheme would be continued until 2010. This is, in itself welcome, however an opportunity to review and revise the terms of the scheme to ensure it is fully accessible and workable is now required.

Conditions

The difficulty with the present scheme is that it is overladen with conditions which effectively exclude from relief many organisations who, in terms of the general policy intentions ought to benefit.

There are six hurdles a voluntary organisation has to leap to qualify for the relief. The most perverse of these causes damage to groups who expend a great deal of effort in investing in their communities.

Good examples of this include Lochranza on Arran, where the former village hall had been condemned by the firemaster and the community set to with a will to raise the great bulk of the cash themselves. With a small contribution from the National Lottery, the new hall was built less than 50 meters from its predecessor on a patch of land long ago assigned for community use. The new hall is fully fitted out to meet the needs of those with disabilities, and has attracted much favourable comment from community activists from much wider afield. Yet the very first hurdle faced by the hall committee was a huge jump in water charges, by over 1000%.. This was because Ministers had decreed that moving to a new location lead to the loss of all pre-existing

reliefs from charges. Imagine if the same thinking were to be applied to industrial or commercial investment! The private sector receives substantial investment assistance and much of UK investment is designed to boost productivity. We saw more widely with the Millennium Halls programme in Scotland, managed by SCVO, just how much could be achieved by a combination of skilled professional support and local people working together. Yet all of the new build projects that formed part of that programme automatically lost all reliefs.

Another practical example. The marriage guidance centre in Inverness moved from a very poor second floor flat in an off-centre location to a prominent city centre location with good parking and full disabled access. Yet the water bills jumped by over 700%. When supply contracts have been entered into with local authorities and others for the following three or five years, it is very difficult to re-work these to build in such huge external cost increases.

These examples are supplemented by many more caught by the operation of the other five conditions of the charities exemption scheme. For the Ministerial announcement of 31st August extending the scheme to have been wholeheartedly welcomed, it would have been accompanied by a commitment to revisit the applicability of the six conditions and test whether they were proving practicable. It is certainly true that they have severely limited the original Ministerial intention of ensuring reliefs worked for 80% of smaller Scottish charities. The out-turn figures suggest that 19% only have had their reliefs fully granted.

Public Benefit

The key issue of principle remains the community's support for the work of charities for the public benefit they deliver. This is why the introduction of the Charities and Investment Trustees Investment (Scotland) Bill to Parliament this session is directly relevant to this debate. The Charities Bill determines quite explicitly that charities are for public benefit.

If Scottish Water is truly to be a public corporation, there is a very strong case for it to address the key issues of affordability across the board for low income households, small businesses and charities. ***It is clear, however, that there is a very particular case to be made for charities to be assured a level of relief from water charges by virtue of our intrinsic public benefit.*** Unlike business, charities operate on a not for profit basis. We plough back everything into the services we provide for our clients and to meet our charitable objectives.

At the recent conference of affordability, the Minister revealed a very welcome shift in Executive policy. We welcome the injection of real public objectives into the remit of Scottish Water to meet the wider needs of the community. We regard it as an overdue response to real need. To reinforce this shift ***we would suggest the Committee consider the case for assuring charities relief from water charges in the longer term by introducing an***

appropriate clause to the face of the current Water Services etc (Scotland) Bill.

This is because the current policy does not address what will happen after 2010, and still leaves many charities unable to meet their bills and others reluctant to embark on new investment, because of the change in charges this would incur. In some cases, voluntary organisations are still being pursued by Scottish Water in rather pointless court actions where resolution has still not been achieved after 4 years – and Clydecare is not the only such example.

Despite these difficulties, and the hard road that has been walked in the last eight years, there is now a real chance of a secure, fair and sustainable settlement. At the affordability conference, there was a striking consensus in favour of a contribution from general taxation to cover the costs of some reliefs, which suggest a very appropriate long term solution.

In the short term a constructive negotiation around removing all or some of the conditions of the current scheme would be extremely welcome. SCVO stands ready to discuss these issues with the Executive and the Parliament and looks forward to the debate as it develops in the coming months.

SUBMISSION BY THE SCOTTISH CONSUMER COUNCIL

INTRODUCTION

The Scottish Consumer Council (SCC)'s role is to represent and promote the interests of domestic consumers, particularly those who are disadvantaged in any way. We therefore share the Scottish Executive's policy objectives in relation to the Bill i.e. the universal accessibility of a safe and clean supply at a price that is affordable to all and an emphasis on meeting social policy objectives and protecting disadvantaged consumers.

We welcome the Water Services Bill which we believe is much improved from the draft Bill. We did not consider that the draft Bill contained enough evidence to support proposals for what will be significant reform in water services. We now welcome the responsiveness of the Scottish Executive to the previous concerns expressed by the SCC and other organisations in relation to the need for a considered approach to the introduction of any competition, a fuller debate on charging and affordability, and a strengthened framework of regulation.

We do, however, believe that there is one significant omission in the Bill relating to the fact that there is no statutory role for the Water Customer Consultation Panels within the new regulatory framework.

COMPETITION

Common Carriage

Generally, competitive markets have the potential to deliver real benefits for consumers in the form of lower prices, improved efficiency and better value for money. However, the protection of public health must be of paramount importance. The SCC therefore welcomes the cautious approach being taken in the Bill to introducing competition into the water industry.

The specific structure of the industry i.e. the high costs involved in maintaining and developing the infrastructure, together with the low marginal cost of what is a homogenous end product (potable water), leaves less scope for reducing prices and less incentive for consumers to "shop around." The uncertain potential benefits of common carriage are outweighed by the significant risk to public health caused by even one adverse water quality incident, a risk that becomes greater as access to the network is widened. In the interests of public health, the precautionary principle should apply and the prohibition of common carriage is the low risk option.

Retail Competition in the Domestic Sector

The Bill argues that the major risks for households under retail competition are related to the possible discontinuation of the current Council Tax charging arrangement. The danger is that existing protection for vulnerable consumers will disappear, that new market entrants will "cherry-pick" high-banded properties, and also that only customers whose dwellings are cheaper to supply will also be targeted. This would leave Scottish Water no option but to increase charges to groups occupying lower-banded properties or living in more rural and remote areas. We accept the argument that these groups may not benefit from retail competition and that the Executive correctly highlights the risks associated with "cherry-picking".

Retail Competition in the Non-Domestic Sector

As end-users, and price-payers, of the products and services produced by businesses, the consumer plays a key part at the centre of a healthy business economy. When business costs rise consumers play a role, through increased prices, in meeting these costs. There is, therefore, a legitimate consumer interest in seeing businesses secure the best opportunity possible to keep their water charges as low as possible.

However, it will be very important that those who do not form any part of a competitive arrangement (i.e. domestic consumers) are not asked to underwrite the initial and ongoing costs of the competitive

framework. The possibility that the introduction of retail competition in the business sector will impact adversely on water services for domestic consumers should not be under-estimated. Consumers will need to be re-assured that the loss of any business customer revenue base will not affect Scottish Water's core costs and, as a result, domestic charges and standards of service. In the interests of transparency, we support the proposed structural separation of Scottish Water's wholesale and retail arms.

It will be vital to ensure that water and sewerage providers to all business retail customers pay a reasonable price to Scottish Water for entry, water, treatment, network services and regulatory costs. The price should cover their full contribution as water customers to the cost of maintaining and upgrading the public network infrastructure. The core costs of maintaining, improving and investing in the network must be shared, and be seen to be shared, by all in order that domestic consumers do not bear a disproportionate part of these costs. This will be a key role for the new Water Industry Commission.

REGULATION

The SCC welcomes the move towards establishing a Water Industry Commission. This is in line with accepted best practice in regulatory accountability. We also welcome the clear distinction that is being proposed between the social policy responsibility of Scottish Executive ministers and the economic responsibility of the Commission. The Commission's role will be clearly, and correctly, to focus on ensuring that policy is implemented rather than invented. Nevertheless, we do believe that it should have a statutory duty of sustainability, in line with the existing requirement on Scottish Water. When deciding on processes to implement Scottish Executive policies, the Commission should be required to be mindful of the impact of its decisions on sustainable development in its widest sense i.e. economically, environmentally and socially just.

As a public body, the membership and functioning of the Commission should be consistent with widely recognised practice in corporate governance. We agree with the need for members of the Commission to possess the required expertise to deliver effective economic regulation of the industry. We agree that the membership should comprise individuals who meet the required criteria. We do not think it would be helpful for the membership to be drawn from vested interests or representative stakeholder groups. This could have the potential to divert the Commission from its focus on regulating the industry objectively. Stakeholders should of course be involved and consulted in the work of the Commission in other ways. We do believe that the Bill should emphasise the need for Commission members to be independent of Scottish Water and/or any other provider of water in Scotland. In line with the recommendations of the Better Regulation Task Force, members should be subject to regular performance appraisal. This is consistent with good practice in other NDPBs.

While accepting the principles embodied in the new regulatory framework and the respective roles envisaged for the Commission and the Scottish Executive, we do believe that the provisions in the Bill need to be strengthened to ensure that these roles and responsibilities are underpinned by more specific statutory requirements. This is to ensure that the proposals actually work in practice and that the required objectives of transparency, accountability and robustness are met.

The Bill, as it stands at present, requires Ministers to consult on their policy guidance on charging with the Commission and with Scottish Water. This should also include the Water Customer Consultation Panels and should be preceded by public consultation. The Minister should be required to report back to Parliament on the achievement of the policy objectives by the Commission and Scottish Water. The current wording of the Bill requires the Commission to submit an annual report to Ministers but there is no requirement on Ministers to lay this report before Parliament.

Stronger duties need to be placed on the Commission if transparency and accountability are to work in practice. The Commission should be required to:

- Consult publicly on its proposals and on its charges determination
- Publish its proposals so that they are accessible and understandable to the public, including vulnerable groups

- Ensure that its Annual Report, Corporate and Business Plans are in the public domain
- Hold meetings in public and publish a code on openness
- Carry out regulatory impact assessments (incorporating consumer impact assessments) on all proposals.

Water Customer Consultation Panels

Within the new framework of regulation, there are key issues where a tripartite group (comprising the Commission, Ministers and Scottish Water) will be required to be party to a process of statutory consultation:

- Section 18 requiring Ministers to consult with the Commission and Scottish Water on its proposed charging policy and requiring the Commission to consult with Scottish Water and Ministers on its proposed charges determination.
- Section 19 requiring Ministers to consult with Scottish Water and the Commission on any additional functions it seeks to confer on Scottish Water.

We believe that the consumer voice will be weakened by the omission of the Water Customer Consultation Panels from these requirements.

There are, however, wider issues with regard to the capacity of the Panels to meet the increased expectations of consumers, the Commission and the Scottish Executive within a more transparent and accountable framework. The Panels will face additional responsibilities in responding to a significant increase in consultation documents, participating in probably more numerous ongoing policy initiatives and in identifying the consumer interest across a broader and more complex range of issues, particularly the introduction of competition and changes to the charging regime. Consumers will look to the Panels to articulate the consumer interest in all of these and policy-makers will require the Panels to back up their policies with evidence which goes wider than that obtained through public meetings. The Panels will need the capacity to undertake research and to employ staff with the policy expertise to analyse evidence and translate it into practical policy proposals. The Financial Memorandum of the Bill needs to recognise the fact that the Panels will require to be equipped within the new policy environment, that they too will be expected to become more transparent and accountable, and that they will require additional, probably modest, resources to do this.

In order to be effective, the Panels will need access to the information they need about the water industry. It is likely that this information will already be possessed by the Commission. There is no point in duplicating work. Therefore, the Panels and the Commission should be required in statute to draw up a Memorandum of Understanding that sets out agreed arrangements with a view to securing co-operation and exchange of information between them and consistent treatment of matters which affect both of them. This is common practice in others sectors including energy and postal services.

We do, however, welcome the fact that the Bill provides that the Panels will only be responsible for customers served directly by Scottish Water on a wholesale basis i.e. domestic customers. This is in recognition of the fact that non-domestic customers will have a choice of supplier and protection under a licensing regime that will give them recourse to the Commission.

Large business consumers have the buying power and resources to make their voices heard and their interests are likely to vary from, and often be at odds with, those of individual consumers and smaller businesses. However, even small businesses have a clear voice through trade associations that can campaign effectively at strategic level. Individual consumers cannot make their voices heard collectively in this way – their issues and interests will always be diverse.

The operational support which a consumer organisation will provide to an individual, very small business and to domestic consumers may, on the whole, be very similar as they are likely to experience the same service issues. However, the policy solutions for similar situations could vary for different groups. A consumer organisation which has a remit for both business and domestic consumers will have to be very clear about the impact of its policies for each and the possible tensions which might exist between the different interests. A good example of this is in relation to charges and the extent to which cross-subsidies between different groups exist.

Having responsibility for domestic consumers will target resources towards those most in need of an advocate body.

CHARGING

The SCC will be responding to the current consultation on paying for water. We welcome this very important initiative by the Scottish Executive. Like many other organisations, we have called for a public debate on charging for water and affordability for disadvantaged consumers. The Executive is to be congratulated in seeking to tackle this issue and in a manner that aims to secure meaningful consultation with stakeholders on the way forward.

We set out the principles we believe are important in underpinning how we should pay for water. Some of these principles mirror the Scottish Executive's proposals and some put a different slant on them. We also have a list of additional principles that we think should be included in any framework that sets out how we should pay for our water.

Access to a water service that meets our public health needs is a right to which all citizens are entitled. On this basis, many people would advocate that the industry should be treated as a "public good," fully-funded through taxation. However, water is also a commodity where its consumption and use is not a health pre-requisite, for example, to wash our car or hose the garden. Like any other commodity, it has to be paid for.

But we have to be clearer about this distinction and how we fund these two very different aspects of our water service, the part that is for the "public good" and the part that relates to our more discretionary use of water as a commodity. The consultation paper seeks to address both within the parameters of the charging system. This is too narrow an approach. We would like to see more clarity from the Scottish Executive on how we should identify the distinct differences that exist between citizens and consumers in relation to paying for water.

Where a supply of water is needed in the interests of social justice it should be paid for by government and citizens as taxpayers.

We agree with the principle of full cost recovery on this basis and with the following caveats:

- We fully support the notion that costs should be allocated among different customer groups on a rational basis.
- We should help those who cannot afford to pay the costs. Exceptions to full cost recovery are vital for social reasons. The essential nature of water and its importance for public health means that there is a need to protect disadvantaged consumers from costs disproportionate to their income. But help for those who cannot afford to pay must be seen as an issue of social policy, rather than service provision. It should be addressed outwith the parameters of the charging system and funded by society as a whole and not cross-subsidised by other water customers. Provision of assistance with water bills as part of Income Support has eroded and there is a responsibility on the UK government to ensure that affordability of water is seriously addressed as a social policy issue within the benefits system. The Scottish Executive and DWP need to work together to resolve this issue.
- In England and Wales, DEFRA has set 3% of household expenditure as a measure of affordability of water as part of its sustainable development indicators. It has been calculated that this affects around three million households.¹ We need a similar indicator in Scotland so that we are able to define affordability and set targets to ensure that it is achieved. Any

¹ National Consumer Council, *Lifelines*, 2003

measure of affordability must be based on consumer research evidence. The evidence base we have at present is poor.

- We need to guard against rural disadvantage. We supported the creation of Scottish Water and the creation of a national charge as against the problems caused by the previous system where consumers paid significantly different amounts for their water by virtue of their position on either side of a somewhat arbitrary line drawn on a map. The need to address the particular geography of Scotland and the real and potential disadvantage faced by people living in remote and rural areas has long been integrated, at over-arching policy level, as a key means of achieving and maintaining social cohesion in Scotland. However, we have to be clear about and tackle the inherent tensions between harmonisation as a social policy tool and as a form of cross-subsidy. If we are going to commit to cost recovery, then this, the largest cross-subsidy of all (urban consumers to rural consumers) becomes irrational (or unfair) to urban consumers in the narrow context of the charging system. Sustaining our rural communities and protecting rural residents from the disadvantage caused by our nation's geography is surely an issue of social policy that requires intervention by government rather than by other consumers. Paying for water could be subject to a rural assistance in the same way that our ferry services have been or in the way that our rural post offices are being protected. We refer to the recent announcement by the Scottish Executive of assistance for rural petrol stations.

We believe that a charging system should incorporate the following additional principles:

- Sustainability
- Meets public health objectives
- Is understandable to consumers
- Is transparent and clear on the nature and extent of cross-subsidy
- Is straightforward for consumers to pay and effective for Scottish Water and local authorities to administer.

With regard to the charging consultation and the Bill, there are two further issues we would like to raise:

- National Consumer Council research² revealed that, in relation to essential services, disadvantaged consumers wanted face-to-face contact with sympathetic, pro-active suppliers, together with flexible tariffs and payment terms. Section 18 of the Bill gives Scottish Water the power to make provision within its own charges scheme with respect to the times and methods of payment of charges. We believe that, with regard to low income consumers, method and timing of payment can be just as important as level of charge and indeed, can, if used flexibly, make it easier for people to pay their bills. As such, we believe that this should be an issue of social policy set by Ministers rather than the service provider.
- If a system of charging were, at any time in the future, to become de-linked from the Council Tax charging arrangement and set within the taxation or benefit system, then disadvantaged consumers would be protected from some of the risks associated with retail competition. If this were the case, then we think that there would be merit in reviewing whether the scope of retail competition should extend to the domestic sector. This should be conditional on an assessment that competition would bring real benefits. There would need to be a framework that provided incentives to companies to pass benefits on to domestic consumers and which built in protection for disadvantaged consumers.

September 2004

² National Consumer Council, *Everyday Essentials, Meeting Basic Needs*, 2003

SUBMISSION BY THE WATER CUSTOMER CONSULTATION PANELS

The Water Customer Consultation Panels were established by the Water Industry (Scotland) Act 2002, to represent the views and interests of customers of Scottish Water. The Panels welcome the opportunity to comment at Stage One of the Bill, and in doing so have reflected on the current consultations on Investing in Water Services 2006-14, and Paying for Water Services 2006-10. The Panels' responses to the Committee's detailed questions are:

Part 1 of the Bill: replaces the Water Industry Commissioner with the Water Industry Commission:

1. *Is the scope and effect of the change appropriate?*

The Panels understand that the current role of the Water Industry Commissioner is not as an economic regulator, but as an adviser to Ministers. The Panels believe that economic regulation, in an industry as important as water, should be carried out in a focused and clearly defined manner. The Panels therefore welcome the proposal to create a Commission, in line with Better Regulation and the Scottish Parliament Finance Committee's recommendations, and that the Commission's role and remit reflects the need for statutory economic regulation.

The Panels support the proposal that the Commission should comprise economic and technical experts, but hope that the composition of the Commission will draw from a broad range of experiences. The Panels do not believe that the Commission should directly represent any stakeholder interests. The Panels believe that a Commission which carries out its functions in an open and consultative manner should take the wider impact of its decisions fully into account.

The Bill currently proposes that the Commission will retain the role of promoting customer interests. From this arise the questions of how the Commission will do this: will there be any conflict of interest regarding its role as a licensing authority? How will the Commission assess the wider implications of its determinations, in particular, the effect on social considerations, environmental impacts, and sustainable development policies?

To assist address these questions, the Panels strongly advocate that consumer interests should be advanced separately, and that the roles and responsibilities of the proposed Commission and of the Panels, as the water customer organisation, should be carefully examined and clarified. This includes the relationship between the Panels and the new entrant companies, and their customers.

Since the formation of the Panels in 2003, there has been confusion on roles and remits, which has affected both customers (at complaints level) and key stakeholders (at strategic level.) The Panels believe there is now an

opportunity to strengthen their powers, role and remit on behalf of all customers. This would bring clarity for customers and the industry. The Panels believe they are ideally placed to adopt an advisory role on policies within the industry (working with Scottish Water, the Water Industry Commission, the Scottish Environment Protection Agency, and the Drinking Water Quality Regulator) to represent customers effectively.

2. *Will the proposals achieve the stated aims of improving the transparency, accountability and consistency of regulation in the water industry?*

The Panels believe that the water industry has recently demonstrated a marked improvement in transparency, and that the proposals within the Bill provide for greater improvements. The Panels recommend enhancing this by enshrining consultation into the legislative framework, and by ensuring that the Commission has regard for advice and recommendations from appropriate stakeholders, such as the Panels as the customer representative organisation.

Part 2 of the Bill: makes a number of provisions regarding water and sewerage services:

3. *Are the provisions in this Part of the Bill (i.e. the various elements of the proposed model of competition, and the framework for charge determination) appropriate and clearly defined?*

From a layperson's perspective, the possible implications of the Competition Act 1998 on the water industry in Scotland are not clear. The Panels believe the Executive has much to do to explain the requirement for a limited competition framework, and its pace of implementation.

The framework itself also requires clear and simple explanation by the Executive, in particular on its reasons for prohibiting common carriage. The Panels recognise the objective of the prohibition is to protect public health and to ensure water environment objectives for the water industry are met. However, reasoning for prohibition needs strengthened, especially when compared with developments in England & Wales, where limited common carriage will be permitted. This leads to the broader question of why, across the Bill, proposals for Scotland are different from those south of the border.

Regarding the arrangements for competition and the licensing regime, the Panels are concerned at the general complexity of the proposed arrangements, and the potential costs to Scottish Water of responding to them. The benefits to customers have not yet been made clear.

4. *What are the likely effects of the provisions on the fair and effective provision of water and sewerage services?*

The Panels find it difficult to provide a full and comprehensive response in the absence of clear and detailed information and assessments, both at

consultation stage, and now with the Bill itself. The Panels' main concerns lie around the following questions:

- How will the proposed changes affect price levels for all customers?
- How will customer service levels be safeguarded for all customers?
- What will be the effect of distracting the energies of Scottish Water and the Water Industry Commissioner away from the very challenging agenda for investment and the ambitious targets set for Scottish Water's routine operations?
- How will Ministerial decisions and policies be affected by the competition regime (for example, if Surface Water Drainage is to be charged by bandings as of 2010, how would that work in the new arrangements)?
- How will the wholesale price be reflective of wider Ministerial policies? If it is not, will any shortfalls then pass to remaining Scottish Water customers?
- Will the separation of Scottish Water's retail and wholesale operations introduce significant additional costs for customers, beyond those estimated?
- Is the proposed timetable for the Commission and Scottish Water over-ambitious?
- Would a 2010 implementation date not be more realistic, and more consistent with the strategic review period?
- The exemption scheme is currently funded by Scottish Water customers, and has been extended to 2010. How will these proposals impact on those arrangements?

The Panels believe there should be a more detailed assessment, followed by further debate and consultation, as a major step towards addressing the above concerns.

Part 3 of the Bill: establishes statutory powers to tackle and prevent coal mine water pollution:

5. *Is the scope and effect of the provisions appropriate?*

This is not within the Panels' area of knowledge, however the provisions seem sensible. The Panels are pleased responsibility will be clear, and that these measures are mirrored with England & Wales.

Part 4 of the Bill: makes miscellaneous and general provisions relating to offences and powers created under the Bill.

6. *Is the scope and effect of the provisions appropriate?*

The provisions detailed in Part 4 of the Bill appear appropriate.

Other matters: Views are also welcome on the policy memorandum and financial memorandum accompanying the Bill:

7. *How helpful do you find these documents?*

The Panels found both documents to be clearly written, but lacking the level of detailed information the Panels feel should have been made available. The Panels believe there should be further assessment of the proposed changes, in terms of both financial and customer service benefits. The Panels also feel that the Scottish Executive should provide clear, simple, and accessible evidence for policy proposals.

8. *Are the financial consequences of the Bill sufficiently clear?*

No, the financial consequences are not sufficiently clear, and the Panels refer to their response to the Finance Committee, as detailed below:

The Panels ... find it difficult to form a clear view due to the lack of detailed analysis provided. The Panels would have liked to have seen further breakdown of the estimates of costs within the Financial Memorandum to allow for easier consideration and understanding. It has been suggested that the final costs may be substantially higher than the current estimates.

The Panels would be extremely concerned if uncertainty over cost estimates resulted in a severe impact on pricing policy for all customers. A visible and detailed analysis on all aspects of the Bill would assist alleviate this concern. In particular, the requirement on Scottish Water to separate its wholesale and retail operations, the development of strategies to respond to competition and the licensing regime, and the ongoing costs of serving such a regime, require careful assessment and clarity of financial impact.

The Panels are also concerned regarding the financial implications of possible disparities between Ministers principles and policy decisions on paying for water services, and their place within a wholesale charging scheme. Were it to transpire that the framework for competition led to shortfalls, this burden would then fall to remaining Scottish Water customers, or to the Executive. (For example, if Ministerial decisions on cross-subsidies could not be sustained, or potential loss of large users resulted in significant revenue deficiency.) The Panels would encourage clear and transparent measures to safeguard Ministerial policy objectives and the benefits to customers of those policies.

The Panels final comment at this stage would be in considering the much broader implications that may result from the Bill, especially the potential distraction for Scottish Water and the Water Industry Commissioner from the efficient and effective delivery of the next investment programme, which will be as large in scale and scope as the current programme. The potential financial ramifications of this are understandably difficult to forecast, but must be given due care and attention.

9. *Are the effects of the Bill on sustainable development accurately and clearly described?*

The Panels do not feel that the Bill has been clearly linked to sustainable development. There are inconsistencies across the industry on applying policy on sustainable development. Scottish Water has a current statutory duty to do so, however neither the Commission nor new entrant companies will have. This raises questions of socio-economic considerations, equitable pricing policies, and a sustainable industry for Scotland as a whole.

10. *Do you have any comments on the consultation that the Scottish Executive carried out prior to the introduction of the Bill?*

Although consultation policy was followed, the Panels would comment on the lack of detailed information available, in particular at consultation stage; the difficulty in accessing all responses to the consultation exercise; and the exclusion of the Regulatory Impact Assessment from the associated documents. The Panels would be keen to see improvements in these areas.

SUBMISSION BY COSLA

Introduction

COSLA has a strong interest in the delivery and provision of water services within Scotland. This is not merely due to the joint billing and collection we are required to undertake but also due to the impact water services have on the environment, regeneration and the everyday lives of the people of Scotland.

COSLA would like to take this opportunity to remind the Committee that the long-term impact of the lack of sustainable development being delivered by Scottish Water. The Committee must recognise that this hampers regeneration and will have a major impact on a number of Executive and Local Government priorities.

There are a number of consultations taking place at this present time on the issues surrounding water services in Scotland and it is important that these are viewed collectively. However, it is very important that this is not used as a reason to not take action. While the results of one consultation may impact on the findings of another if a fundamental principle can be changed it should be.

The Water and Billing consultation recognises that Local Authorities pay across to Scottish Water £18m of in year Council Tax revenue that is not revenue collected on behalf of Scottish Water. While this figure is reduced as collection rates reduce over time it does have a significant interest rates associated with the cash flow disadvantage. In one Local Authority this is £1.50 for each household. Both Scottish Water and COSLA have stated that their view on this cash flow advantage will not be affected by the proposals in the Paying for Water Services consultation. Therefore, COSLA would draw this to the attention of the Committee as an example of where a fundamental issue can be addressed prior to the findings of subsequent consultations.

The Main Changes Within the Bill

Common Carriage

The Bill proposes to prohibit by creating offences in relation to the unauthorised use of the public water and sewerage systems. The aim here is to ensure that other utilities will be prohibited from selling water services to domestic customers. COSLA welcomes this proposal. It is important that safety of the water supply is important and by closing the legal loophole that the Bill mentions it ensures that only one body is dealing with treatment of water. It also will ensure that in the unfortunate scenario of a problem arising that only one body is accountable.

Limit Retail Competition

The Bill seeks to introduce a licensing system to limit retail competition for the provision of water and sewerage services for non-domestic customers only. COSLA would seek further information and assurances on this issue from the Executive but if the benefit gained from this were a better value for money approach to the billing process for non-domestic customers (including Local Authorities) then COSLA would welcome this.

Water Industry Commission

COSLA supports the proposal within the Bill to introduce a Water Industry Commission for Scotland as a body corporate to replace the Water Industry Commissioner. The body would therefore share the decision making and the responsibility of their position.

COSLA also welcome the proposal that the Commission would be accountable to Ministers and recognise that not only is this in the interest of Local Government but also would be in the interests of the public and all interested bodies. However, we do not welcome the suggestion that Ministers do not get involved in conflict resolution. COSLA would seek Ministers to take a full and active role if they were called upon. No side should be looking for conflict but it is necessary that any body can seek Ministerial intervention and guidance if the need arose.

COSLA does express caution about the reference in the proposals that information can be withheld on the grounds of confidentiality. COSLA would welcome assurances that this proposal meets with the approval of the Commissioner for Freedom of Information

Ministerial Power to Give Direction

The Bill makes reference to changing Scottish Ministers' powers to enable them to give directions on Scottish Water's functions. Again COSLA would need to seek further clarification to what the Bill is proposing on this issue before making a full response.

However, COSLA would call upon the Committee to recommend that if any such discretionary powers are to be given to Ministers we would seek assurances that such powers would be made use of.

Fixing Water Charges Discounts

COSLA would now like to address a number of issues and concerns regarding recent Executive announcements and which also arise from recent consultations.

Affordability for Households

The Executive proposes that affordability should be the key factor in calculating the charges for households. COSLA clearly welcomes this, as it is a position that all agree with.

Re-Ordering Discounts

The Minister has publicly called for the current consultation on Paying for Water Services to find that the issue of rate relief for water and sewerage charges be addressed by reappportioning of the subsidies and discounts that are currently given. For example, this would seek the reduction given to single person households being abolished and the discounts given to households who receive rate relief for council tax. The Executive hope that this will go some way to addressing the issue of collecting water and sewerage charges from low income households and would therefore address the cash flow advantage referred to in the introduction.

While COSLA welcome the aim to provide discounts for the most needy households within Scotland the reappportioning of discounts does not address the underlying principle of affordability. COSLA continues to call for the introduction of rate relief for water and sewerage charges in line with the relief given on Council Tax. This will ensure that all households who should receive full or partial relief do receive it.

Council Tax on Second Homes

The Executive have recently announced that Local Authorities can charge up to 90% Council Tax on second homes. The additional revenue from this will not be retained by Local Authorities but will be passed directly to Residential Social Landlords (RSLs).

The additional Scottish Water revenue is not ring-fenced in anyway and will go directly to Scottish Water. The Committee may wish to consider seeking Scottish Water to use this additional revenue to fund capital programmes to address the key issue of development constraints. The maximum additional revenue that would be raised for RSLs is £25m with the Scottish Water share clearly being significantly less than this. While these low amounts, even if invested, will not make a significant impact it would be a clear commitment from the Executive and Scottish Water to tackle the serious issue of development constraints.

Funding Expansion of the Public Networks

Where local capacity is not available the Paying for Water Services consultation proposes that the developer should pay for “whatever costs arise” from the expansion. The paper states that if this were for Executive or the Executive’s agencies, COSLA believe this would also mean Local Government, it would be for the public body to meet the cost.

For a private contractor this additional burden maybe incorporated within the price of land or within the sell on price of a house or housing development but where Local Authorities are building affordable social housing then this additional cost could clearly not be transferred on to a third party. This would then potentially see Local Authorities funding the role of Scottish Water. While the Executive may wish to impose this cost of the private sector it would be a further cost to Local Authorities who are trying to address the issues of regeneration and local sustainability.

Additional Points to Note

Further to the comments raised within the Bill and the additional comments referred to above COSLA would like to take this opportunity to highlight further developments and areas of concern which are related to Scottish Water and the supply of water services.

Scottish Water Debt

A recent independent report commissioned by one Local Authority found that the Scottish Executive paid off the debts of Scottish Water twice. It is important that guarantees are therefore placed on Scottish Water to adjust their spending patterns and to improve their efficiency as an organisation.

Without any such guarantees there is clearly concern that these two payments will set the precedent for Scottish Water to spend beyond their means, to continue to be inefficient, and not to worry about the consequences as the Executive will pick up the tab. This is clearly not an acceptable position especially given the tight Spending Review being forecast by the Executive and the pressure being placed on the public sector to increase efficiencies and to ensure best value is achieved.

Glasgow Council Funds Scottish Water

As the Committee will have seen from recent press coverage Glasgow City Council has recently pledged over £3.4m to Scottish Water to fund regeneration work within the city’s East end. Scottish Water had claimed that it did not have the resources to fund this and Glasgow City Council was not prepared to wait any longer to undertake this regeneration.

While COSLA support the local autonomy, which allows one authority to prioritise funds to enable it to make this funding available to Scottish Water, it is important that the Executive and Scottish Water do not see this as a precedent for funding regeneration. This should be taken as a clear example of the restrictions and frustrations faced by Scotland’s Local Authorities when seeking to work with Scottish Water to undertake long-term projects and the development constraints they are faced with.

The consultation Quality and Standards II did nothing to address the issue of sustainable development. That Glasgow City Council was required to meet the cost of the development work is a clear indication of the impact of this lack of forward planning and the Committee must call upon the Executive to ensure that Quality and Standards III addresses this issue with the weight and seriousness it requires.

Efficiency Savings for Scottish Water

The forthcoming Spending Review announcement is highly likely to include an efficiency saving for Local Government over the period of the Spending Review. This is despite the fact that Scottish Local Government has been delivering efficiency savings since the best value review in 1999, and indeed prior to this.

Scottish Water has used previous efficiency savings as a justification for reductions in service delivery and also for the inability to tackle long-term issues such as sustainable development and regeneration. This is not the purpose of efficiency savings and the Executive must hold Scottish Water accountable to the efficiency savings set.

Local Government will note with interest the level of efficiency savings applied to other public sector bodies such as Scottish Water and the accountability that is put in place to ensure these are met. The Executive must ensure that Scottish Water become an efficient organisation and that it seeks to deliver services within the short term but also tackles the serious long-term issues.

The £18m - Calculating Amounts Payable to Scottish Water

The current Billing and Collection Order requires Local Authorities to pay Scottish Water a percentage based on the total amount collected by an authority regardless of whether this is money due to Scottish Water or not. The current situation means that Scottish Water receives £18m a year that is Local Authority money. The figure of £18m is from Scottish Water's own calculation.

The order does indicate that as collection levels increase then the £18m will reduce as outstanding Scottish Water debt will be collected. This assumption though does not recognise that the collection of outstanding debt may impact on the current years meaning that the £18m remains but is made up of rolling debt. The consultation fails to address that there are significant interest issues associated with the cash flow delay. Within one Local Authority alone the lost interest equates to £125,000 per annum, the equivalent of £1.50 per household.

COSLA propose that the new Billing and Collection Order adopts the proposed option where a Local Authority can calculate payments by applying the formula on an individual accounts basis. This is clearly the fairest and most appropriate resolution as it will ensure that Scottish Water receive the money that has been collected on their behalf without causing a cash flow deficit to the majority of Scotland's Local Authorities or Scottish Water.

COSLA have written to the Minister urging him to take action to address this issue but as the Minister hopes the consultation Paying for Water Services will reduce the £18m figure he feels this does not need to be addressed prior to the findings of the consultation. COSLA cannot accept this position.

Agenda item 3Environment and Rural
Development Committee

22nd September 2004

ERD/S2/04/21/3a

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Stage 2 of the 2005/2006 Budget Process

1. This paper sets out the general arrangements for Stage 2 consideration of the Scottish Executive's 2005-06 budget and invites the Committee to consider its approach to Stage 2 consideration of the budget this year.

The Budget Process 2005-06 - Stage 1

2. At Stage 1 of the budget process, the Committee examined and reported on the broad Environment and Rural Affairs portfolio budget proposals for 2005-06, as outlined in the 'Annual Evaluation Report'.
3. The Committee conducted its Stage 1 budget scrutiny alongside an inquiry into the implementation of CAP reform in Scotland. This approach allowed the Committee to examine both the budgetary considerations and the policy issues raised by the implementation of CAP reform in Scotland.
4. In its Stage 1 Report to the Finance Committee the Committee made a number of recommendations. In relation to the implementation of CAP reform the Committee recommended that the Executive should consider:
 - The creation of 'broad and shallow' agri-environmental schemes in Scotland similar to those proposed by DEFRA, and that such schemes should be made accessible to as many farmers as possible, in return for the provision of explicit and additional public benefits.
 - Providing more resources to ensure that farmers have access to training and advice to allow them to meet the challenges of positioning the industry to meet the new cross-compliance requirements under the CAP, and in adapting existing farm businesses so that they can respond appropriately to a more market-oriented regime.
 - Funding wider rural development measures, very few of which are funded under the current Plan.

The Committee also sought clarifications regarding science spending and support for fisheries management.

5. The Committee highlighted a number of presentational issues which it recommended should be addressed in order to improve future scrutiny of the budget. These included:
 - The need for documents that are consistent and transparent in nature, thereby allowing year-on-year comparisons to take place.
 - The need for more effective scrutiny of cross-cutting issues, especially where spending may fall into more than one portfolio.

- The difficulty in conducting meaningful budget scrutiny when money is “parked” in specific budget lines without any further explanation being given in the budget documents.
 - The difficulty in conducting meaningful budget scrutiny when many of the targets and figures in the AER are based on figures developed as a result of the 2002 spending review. It is obvious that these figures will change as a result of the 2004 spending review, and it is difficult to comment on figures that do not reflect true spending intentions.
6. The Committee also raised a number of concerns in relation to the objectives and targets set out in the documents, and recommended further explanation of:
- How the four new priority themes set out in the AER Introduction relate specifically to the SEERAD portfolio and spending priorities.
 - How actual performance against targets is to be assessed when the objectives are revised with each Spending Review process (this is especially relevant when the period they relate to may not be complete).
 - How targets link with specific budget lines and what outcomes will be achieved by this spending.
7. In relation to specific objectives and targets the Committee recommended that:
- The target for compliance by waste water treatment works should be reviewed, with the objective of achieving more effective odour control in relation to future waste water treatment.
 - Further explanation should be provided on the use of ‘numbers of walkers visiting’ as a target for natural heritage.
 - Targets set for the Less Favoured Area Support Scheme and the measurement of its effectiveness should be reviewed.
 - The overall theme of sustainable development should be further elaborated on as part of the SEERAD portfolio. This may assist enhanced committee scrutiny of cross-cutting issues such as climate change.

Stage 2

General

8. Each year subject committees are required to set aside time for Stage 2 scrutiny in September-November following the publication of the ‘Draft Budget’.
9. Stage 2 of the process allows for an examination of the Executive’s more detailed spending proposals as set out in the Draft Budget, along with the Minister’s formal response to the Committee’s Stage 1 report. As part of their reports to the Finance Committee at this stage, subject committees are expected to consider whether the Draft Budget proposals take account of views expressed in their Stage 1 report. The Finance Committee will subsequently report to the Parliament on whether the Draft Budget generally reflects the views expressed in consultations.
10. The Draft Budget may include funding allocations which have been revised since Stage 1. Subject committees may therefore want to examine whether Departmental policy priorities are clearly reflected in the funding allocation,

whether it is clear why those areas which have 'lost out' have done so, and what the impact on those areas will be.

11. In its Stage 2 report the Finance Committee has the option of putting forward an alternative draft budget to the one published by the Executive. Therefore subject committees may choose to recommend certain amendments to the draft budget. However, it should be noted that these amendments cannot have the effect of increasing the overall budget of the portfolio. If members wish to recommend an increase in any particular budget line, they should also indicate where this money should be found within the portfolio. If this option is taken, the Parliament would debate this alternative budget at the end of Stage 2.

Spending Review

12. The broad spending plans for 2005-06 were first set out as a result of the UK Spending Review in 2002. These were the figures which appeared in the 'Annual Evaluation Report' examined by the Committee at Stage 1 this year. However, the results of the UK Spending Review 2004 (which were announced in July) are likely to mean that the Scottish Executive Draft Budget may include funding allocations which have been revised quite substantially since Stage 1, as the UK Spending Review results in changes to the overall Scottish Executive budget. The Executive will make a separate announcement of the subsequent allocations to portfolios within the Scottish Executive budget.

Anticipated Timetable

13. Subject committees are required to report to the Finance Committee by 17 November. It is anticipated that the Minister for Finance and Public Services will announce the results of the Spending Review towards the end of September. This is later than previously expected, and it is anticipated that the Draft Budget may consequently be published later than in previous years. The Ministerial response to each subject committee's Stage 1 report is expected to be incorporated in the Draft Budget document.

Options for Stage 2 consideration

14. As previously agreed by the Committee, Professor Ken Thomson has been re-appointed as budget adviser for Stage 2 of the budget process. **It is proposed that Prof Thomson be asked to provide analysis of the Spending Review and Draft Budget documents as soon as possible after their publication.** This will allow the Committee to follow through the issues raised in its Stage 1 report, together with other budgetary issues raised during the CAP inquiry. The Committee will also be able to examine the impact of the Spending Review on the issues identified at Stage 1 of the process.
15. The timetable above indicates that relevant Stage 2 documentation may not be available to the Committee until well into October. Members should note the Committee will still be heavily involved in Stage 1 of the Water Services etc (Scotland) Bill at this time. The Committee may therefore wish to consider the amount of time it wishes to devote to stage 2 of the budget process. Given the limited time available **it is proposed that the Committee agrees to limit its**

evidence-taking at Stage 2 to taking oral evidence from the Minister for Environment and Rural Development. This evidence is likely to be taken at its meetings on 27 October or 3 November. This would allow the Committee to consider a draft report on 10 and 17 November.

Summary

- 16. The Committee is invited to note the arrangements and timetable for Stage 2 of the budget process, and to agree its approach.**