



The Scottish Parliament

Environment and Rural Development Committee

24th Meeting, 2004

Wednesday 27 October 2004

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

1. **Item in private:** The Committee will consider whether to take item 4 in private.
2. **Budget process 2005-06:** The Committee will take evidence from Lewis Macdonald MSP (Deputy Minister for Environment and Rural Development).
3. **Subordinate legislation:** The Committee will consider the following negative instruments—
 - the Controlled Waste (Fixed Penalty Notices) (Scotland) Order 2004, (SSI 2004/426); and
 - the Litter (Fixed Penalty Notices) (Scotland) Order 2004, (SSI 2004/427).
4. **Water Services etc. (Scotland) Bill:** The Committee will consider a draft Stage 1 report.

Tracey Hawe
Clerk to the Committee
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The following papers are attached:

<p><u>Agenda Item 2</u></p> <p>A briefing from the Committee's adviser (<i>for members only</i>)</p> <p>A letter from the Minister for Environment and Rural Development in response to issues raised in the Committee's report on Stage 1 of the Budget (2005-06)</p> <p>Extract from Building a Better Scotland – Spending Proposals 2005-2008</p> <p>Extract from the Scottish Executive's draft Budget (2005-2006)</p>	<p>ERD/S2/04/24/2a</p> <p>ERD/S2/04/24/2b</p> <p>ERD/S2/04/24/2c</p> <p>ERD/S2/04/24/2d</p>
<p><u>Agenda Item 3</u></p> <p>The Controlled Waste (Fixed Penalty Notices) (Scotland) Order 2004 (SSI 2004/426)</p> <p>The Litter (Fixed Penalty Notices) (Scotland) Order 2004 (SSI 2004/427)</p>	<p>ERD/S2/04/24/3a</p> <p>ERD/S2/04/24/3b</p>
<p><u>Agenda Item 4</u></p> <p>Draft report (<i>for members only</i>)</p> <p>Report from the Subordinate Legislation Committee</p> <p>Letter from the Minister of Environment and Rural Development on the Financial Memorandum</p> <p>Supplementary submissions from:</p> <ul style="list-style-type: none"> Water Customer Consultation Panels Water Industry Commissioner for Scotland Scottish Water Forum of Private Business Scottish Consumer Council Federation of Small Businesses 	<p>ERD/S2/04/24/4a</p> <p>ERD/S2/04/24/4b</p> <p>ERD/S2/04/24/4c</p> <p>ERD/S2/04/24/4d</p> <p>ERD/S2/04/24/4e</p> <p>ERD/S2/04/24/4f</p> <p>ERD/S2/04/24/4g</p> <p>ERD/S2/04/24/4h</p> <p>ERD/S2/04/24/4i</p>

Agenda Item 2
**Environment and Rural
Development Committee**

27 October 2004
ERD/S2/04/24/2b

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October 2004

I have read with interest the Committee's comments on my portfolio spending as set out in the Executive's Annual Evaluation Report at Stage 1 of the 2005-06 Budget Process. The Committee made a number of recommendations – on odour control, information on CAP Pillar 2 payments, Agri-environment Schemes and training and advice for farmers. My response to these recommendations is set out in the Draft Budget for 2005-06 which the Committee is to consider on 27 October.

There were a number of other issues raised in the Committee's Report on Stage 1 on which, although these did not result in recommendations, the Committee may find it helpful to have a response from me.

The Committee asked what was the specific relationship between ERAD spending and the four "themes" set out in the general Introduction to the Annual Evaluation Report – growing the economy, delivering excellent public services, building better, safer communities and re-vitalising our democratic frameworks.

Of course, as the Committee recognises, most of my spending is driven by mandatory EU requirements in respect of environmental, agricultural and fisheries matters. However, our Strategies for Agriculture and Fisheries and the development within these of our spending in areas where we have a degree of discretion are very much directed at putting our primary industries on a sounder and more sustainable economic footing.

In our administration of CAP and other support measures we place significant emphasis on high standards of service to our "customers". Good communications and easy access to relevant information have formed an integral part of our planning for the introduction next year of CAP Reform changes.

There is no doubt that our significant investment in Water, Waste and the Natural Heritage contributes, in varying degrees, towards better and safer communities. Spending under the Scottish Rural Partnership Fund is specifically community related and makes a small but locally important contribution to the betterment of rural communities.

I would be hard-pressed to claim any direct linkage between my spending and the re-vitalisation of democratic frameworks. Clearly, any set of over-arching themes agreed for the totality of Executive spending will find more or less explicit expression in the detailed spending plans of different portfolios. The absence of any specifically related spending by no means indicates detachment from the principle behind any theme. Of course I share the aim that we should do all that we can to re-vitalise democratic frameworks at all levels and this is certainly reflected in my all inclusive approach to consultation on the many matters for which I am responsible.

The Committee expressed scepticism about the value of the Natural Heritage target on number of walkers, and noted that it was unclear as to how the figures were arrived at. The Committee also notes that the target is a very narrow one given the broad policy area. I have taken account of the Committee's views here in setting a new, broader, target for Natural Heritage spending, as set out in the SR announcement and the Draft Budget.

The Committee asked for further information on the "state of the art assessment of Scotland's water environment". The Scottish Environment Protection Agency (SEPA) are required under the Water Framework Directive and the Water Environment and Water Services (Scotland) Act 2003, to produce a comprehensive analysis on the pressures and impacts on Scotland's water bodies. This characterisation process is significant because it is the first step in defining those water bodies which may require improvement measures to be included in future river basin management plans. These measures will be designed to ensure compliance with quality objectives (by 2015). SEPA published a draft report in July 2004 which identified pressures and impacts such as point source pollution, diffuse pollution, abstraction, morphological alterations and other human pressures on the water environment. This report is due to be finalised by December 2004.

The Committee had previously criticised both the Rural Development targets (on LFASS and SRPF) as being hard to relate to specific outcomes, and expressed concern that they continued to appear. It also generally criticised the continuing appearance of targets set in SR 2002. All targets set in SR 2002 had a currency running until these issues were re-visited in SR 2004. Within this general framework, we should not expect to see targets change in the course of the usual annual Budget scrutiny process. At the Stage 1 scrutiny meeting with the Committee, Allan Wilson indicated a willingness to reconsider the target set for LFASS. We have taken on board the Committee's concerns here and, for the period to 2007-08, we have set what I believe are improved targets for both these areas of spending.

The Committee criticised the "parking" of ring-fenced, provisional Modulation match funding DEL. While the handling of this element of my spending was explained in the SR 2002 document, "Building a Better Scotland", I accept that it was not given equal clarity in the 2005-06 Budget Stage 1 material. I have asked officials to ensure that all future Budget documentation should ensure clarity over any such elements of spending plans.

The Committee sought further explanation as to the reasons for the changes in figures for the SABRIs. The problem arises, I think, because the Committee is comparing SR 2000 with SR 2002 figures – there was no AER last year – and there are no changes.

The Committee noted that the Executive is to undertake a review of the Scottish Climate Change Programme (SCCP) in 2004 and sought further clarification of the budgetary arrangements for this programme following the review. When reviewing the SCCP, consideration will be given to the investments made in support of the measures which make up the Programme. The review will also consider whether existing policies need strengthened, or whether new policies need to be introduced. Due account will be taken of the contribution, from across Ministers' portfolios, to reductions in greenhouse gas emissions, arising from the Executive's new spending plans for 2005 – 2008.

Finally, I note that the Committee remains concerned that what it sees as a falling share of the budget for my portfolio may not accord with the overarching Executive strategy of sustainability. Respective portfolio shares of total SE resources will vary from time to time in the light of the views which Ministers take collectively on our priorities for spending and I do not think it is right to assume that an increasing or decreasing share for my portfolio indicates either more or less commitment to sustainability. Within my aggregate SR 2004 plans we are, I believe, making very adequate provision in support of sustainability. The priority which we continue to attach to spending on Waste and on the sustainability of our farming, fishing and forestry industries amply demonstrates our ongoing commitment in this area of over-arching policy.

ROSS FINNIE

Subordinate Legislation Committee

Water Services etc. (Scotland) Bill

Delegated Powers Scrutiny

Stage 1 Report

The Committee reports to the Environment and Rural Development Committee as follows—

1. At its meetings on 28th September and 5th October 2004 the Subordinate Legislation Committee considered the delegated powers provisions in the Water Services etc. (Scotland) Bill. The Committee submits this report to the Environment and Rural Development Committee, as the lead committee for the Bill, under Rule 9.6.2 of Standing Orders.

Water Services etc. (Scotland) Bill
Report of the Subordinate Legislation Committee
On Delegated Powers Provisions

Stage 1

Committee remit

1. Under the terms of its remit, the Committee considers and reports on proposed powers to make subordinate legislation in particular Bills or other proposed legislation and on whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation.

2. The term “subordinate legislation” carries the same definition in the Standing Orders as in the Interpretation Act 1978. Section 21(1) of that Act defines subordinate legislation as meaning “Orders in Council, orders, rules, regulations, schemes, warrants, bye-laws and other instruments made or to be made under any Act”. “Act” for this purpose includes an Act of the Scottish Parliament. The Committee therefore considers not only powers to make statutory instruments as such contained in a Bill but also all other proposed provisions conferring delegated powers of a legislative nature.

Report

Introduction

3. This Bill, introduced on 11 June 2004, aims to strengthen the regulatory framework for the water industry and to provide certainty for the industry. It secures the Scottish Ministers’ public health, environmental protection and social policy objectives by prohibiting common carriage on the public water and sewerage networks and prohibiting retail competition for household customers. In addition, the Bill contains provisions relating to the Coal Authority.

4. The Bill is in four parts-

- Part 1 replaces the office of the Water Industry Commissioner (“the Commissioner”) established under the Water Industry (Scotland) Act 2002, with a body corporate, the Water Industry Commission (“the Commission”).
- Part 2 makes a series of provisions regarding the provision of water and sewerage services, including a prohibition of common carriage on the water and sewerage networks; the establishment of a licensing regime for retail competition for non-household premises; and enabling Scottish Water to establish a subsidiary for the purposes of applying for licences under the Bill.
- Part 3 makes provision regarding coal mine water pollution, providing a statutory basis for the remediation programme carried out by the Coal Authority to tackle and prevent pollution.

- Part 4 makes miscellaneous and general provision, including the procedure for exercising the order and regulation making powers provided under the Bill.

5. Inevitably, the Bill contains a large number of delegated powers and has therefore been referred to the Committee for consideration of these powers under Rule 9.6.2 of the Parliament's Standing Orders.

6. In addition to the delegated powers which are examined below, the Bill contains a number of powers to make determinations or give directions (see for example new section 1(3) on page 1 and Schedule A1 paragraph 3(1)(c) on page 25) but these powers appear to be of an executive or operational nature and therefore not of interest to the Committee.

7. The Executive provided the Committee with the usual memorandum on the delegated powers provisions in the Bill, which is reproduced at Appendix 1. Having considered the following provisions with the assistance of the memorandum, the Committee approves them without further comment: Sections 2, 7(2), 9(5), 16(3), 26, 27(2), 30, schedule 2 paragraphs 1(1) and (4), 11(1) and (2)(g).

Individual delegated powers

Part 2

Section 4(7) Exceptions to offences regarding the public water supply system

Section 5(7) Exceptions to offences regarding the public sewerage system

Background

8. Section 4 prohibits common carriage on the public water supply system and retail competition in water services in relation to domestic customers. It does so by making it an offence for anyone other than Scottish Water or someone acting on its behalf to introduce water into the public water supply system; use the public water supply system to supply water to the premises of another person; or make arrangements for the supply of water to the premises of another person through the public water supply system.

9. Section 4(7) enables the Scottish Ministers to make regulations specifying circumstances where these prohibitions do not apply, or persons or categories of person to which they do not apply, or only apply to a certain extent.

10. The Executive envisages using these powers if it emerged in practice that the prohibitions were catching activities that it had not been the Scottish Ministers' intention to prohibit. If this turned out to be the case, it would be necessary to amend the provisions establishing the prohibitions in order for them to have the original intended effect.

11. Since this power could have an effect on the fundamental provisions of the Bill, provision is made for any regulations made under this section to be subject to affirmative parliamentary procedure. In addition, the Scottish Ministers are required to consult on any regulations made under this section.

12. Section 5 makes provision to prohibit common carriage and limit retail competition in relation to the public sewerage system equivalent to that provided for in section 4 in relation to the public water supply. Among other things, it makes it an offence for anyone other than Scottish Water or someone acting on its behalf to draw sewage from that system; use that system to dispose of sewage from the premises of another person; or make arrangements for the provision of sewerage to or the disposal of sewage from the premises of another person through that system.

13. The reasons for taking this power are similar to those for taking the power in section 4(7) of the Bill. Once again, given the significance of the power, such regulations are subject to affirmative parliamentary procedure and prior consultation.

Report

14. The Committee considered the justification for these powers very carefully as the Committee considered that the powers could, as recognised by the Executive, have a fundamental effect on the way in which the prohibitions operate by allowing the Scottish Ministers to extend by regulations the exemptions set out in the Bill from offences prescribed in the Bill. In particular, the Committee was concerned that the power might be capable of being used in such a way as to privatise water services.

15. The Committee appreciated that the powers were subject to affirmative procedure and that there was a limited requirement for prior consultation. However, given the use to which they might be put, the Committee indicated to the Executive that it was considering whether the provisions might be more suited to super-affirmative procedure or, indeed, whether it was appropriate to delegate the powers at all. The Committee asked for the Executive's views.

16. In its response, the Executive reiterated the information provided in its memorandum to the Committee on the delegated powers in the Bill. It intends that these powers be exercised only where it emerges that the offences, which are broad in scope, catch activities that it had not been the Scottish Ministers' intention to prohibit.

17. It is not the Bill's intention to restrict inadvertently Scottish Water's continuing ability, in accordance with existing statutory powers, to make arrangements with third parties in connection with the provision of water and sewerage services. Sections 4 and 5 of the Bill contain provisions which address one specific circumstance that might otherwise be caught by the offences contained in these sections. Sections 4(5) and 5(5), exempt third parties supplying water or providing sewerage services to others with the help of services provided by Scottish Water under section 30 of the Water Industry (Scotland) Act 2002 from the offences.

18. However, given the width of Scottish Water's existing powers, it is difficult to predict at this stage all of the circumstances in which legitimate arrangements with third parties might be caught by the broad offence provisions in a way which was not

intended. Some of these may only emerge later, once the provisions have come into force. Accordingly, the Executive remains of the view that the reserve powers in sections 4(7) and 5(7) of the Bill are necessary to reflect Scottish Water's continuing flexibility to enter into arrangements with third parties in connection with the provisions of water and sewerage services.

19. The Executive considers that affirmative procedure and the consultation requirements set out in subsection (8) of each section provide for an appropriate degree of public consultation and Parliamentary scrutiny. The Executive's reply is reproduced at Appendix 2.

Report

20. The Committee considered this response but concluded that it does not appear to add anything to the Executive's position as set out in the Memorandum. In particular, the Committee disappointed that the Executive did not address the Committee's principal concern that the power might be used to privatise water "by the back door".

21. The Committee fully understands the Executive's stated intention in proposing these delegated powers but has been given no explanation as to why the powers have been drafted much more widely than that intention may warrant. The Executive itself acknowledges the fundamental effect that these powers could have on the purposes of the Bill and has not denied that they are capable of being used as widely as the Committee has pointed out.

22. The Committee therefore reports to the lead committee that it has very serious concerns about the very wide extent of the powers the Bill proposes to delegate and the possible consequences that such delegations of power could have. It seems to this Committee that it is at least strongly questionable whether affirmative procedure provides sufficient safeguard given the width of these powers. This Committee therefore recommends that the Environment and Rural Development Committee consider these powers and the procedure chosen from its own perspective.

23. The Committee noted that subsection (8) of sections 4 and 5 binds Ministers to consult only Scottish Water, the Commission and "such other persons as they consider appropriate". **It seems to the Committee, however, that the proposed powers are so extensive as to require public consultation and it so recommends.**

Section 17 Disconnections Code

Background

24. Section 17 contains substantive policy on disconnections. Section 16(6)(a) provides that compliance with the Disconnections Code is one of the conditions that must be satisfied if a request by a service provider to discontinue services is to be granted. The Committee considered that there might be a case for this Code to be subject to some degree of more formal Parliamentary supervision such as laying the Code in draft before the Parliament for approval by affirmative resolution or requiring that the Code be confirmed by order made by the Ministers subject to negative

procedure. In this regard, the Committee noted the example of the framework document under the Fire Bill also before it at Stage 1. The Committee asked the Executive for comment.

25. In its response, the Executive notes the Committee's suggestion that the Disconnections Code, which is to be made by the Water Industry Commission for Scotland, be subject to a degree of more formal parliamentary supervision. However, it does not agree that this is necessary and explains the current position regarding disconnections which are essentially an operational matter for Scottish Water, taking into account the circumstances of each case.

26. Section 16(1) of the Bill makes specific provision for the discontinuance of non-domestic water supplies, at the request of licensed water service providers. It is not intended that the Code rewrite or extend the provisions of section 16 which place in statute the key provisions which must be observed in considering a disconnection. In particular, section 16(6) ensure that any disconnection must not adversely affect any supply of water to premises for domestic purposes or any supply to any other premises.

27. The Bill takes provisions which are at present left to the discretion of the industry and instead requires the regulator, with its responsibility to promote the customer interest, to set out a binding Code. Section 17(4) requires the regulator, in drawing up a Code, to consult on it, including the Convener of the Water Customer Consultation Panels who have a further responsibility to represent the customer interest.

28. In those circumstances, the Executive considers that it is unnecessary for provision to be brought into effect by the Scottish Ministers by order.

Report

29. **The Committee accepts this further explanation from the Executive and approves the power as drafted.**

Section 19 Powers of the Scottish Ministers

Background

30. Section 19 inserts a new section 56B into the 2002 Act. Section 56 of the 2002 Act already gives Scottish Ministers wide powers of direction over Scottish Water in relation to the exercise of its powers and functions. Section 56B enables the Scottish Ministers to make an order conferring on Scottish Water additional or supplementary functions relating to the provision of water and sewerage services. In effect these will become part of Scottish Water's core functions (as defined in section 70(2) of the 2002 Act) and will require to be taken into account by the Commission, when assessing Scottish Water's revenue requirements under the new regime for charging as set out in the amendments to the 2002 Act made by section 19 of the Bill.

31. The power will be subject to affirmative procedure and to prior consultation with Scottish Water and the Commission.

Report

32. This is, as the Executive recognises, a very wide power but there does not appear to the Committee to be anything inherently objectionable in it. The Committee noted that an order under the power can only add to the functions of Scottish Water. It cannot take any away.

33. The Committee therefore approves the power and the affirmative procedure chosen.

Section 20(3) Meaning of “dwelling” in relation to eligible premises

Background

34. Section 20 defines “eligible premises” for the purposes of the licensing regime provided for at Part 2 of, and schedule 2, to the Bill. A licensed provider can make arrangements to provide services to customers in respect of such premises without contravening the general prohibitions in sections 4(3) and 5(3). By linking the definition to premises other than a “dwelling” for council tax purposes (within the meaning of Part 2 of the Local Government Finance Act 1992 (“the 1992 Act”)), the main purpose is to ensure that licensed providers cannot make arrangements to provide services to households. Section 20(3) enables the Scottish Ministers to vary, by order, the meaning of “dwelling”.

35. The Executive points, by way of example, to section 20(2) itself which already recognises that the regime under the 1992 Act to define a dwelling for council tax purposes might operate to exclude premises which, as a matter of policy, there would be no good reason to exclude from the scope of application of the new licensing regime under this Bill, such as “the residential part of part residential subjects”. This means that premises which are technically residential but which form part of a building whose main purpose is to function as a business, for example a care home, are not excluded from the scope of application of the new licensing regime for that reason alone.

36. The Executive envisages that the power under section 20(3) might be exercised should the definition of “dwelling” in the 1992 Act be further amended in a way which cuts across the policy objectives for this Bill. In the same way that the power to amend the definition of “dwelling” in section 72(4) of the 1992 Act itself can be varied under negative resolution procedure (see section 113 of the 1992 Act), subordinate legislation is considered appropriate here as the power is intended to be exercised only to ensure the policy intentions provided for in the Bill continue to be maintained.

Report

37. The Executive has explained the purpose behind this provision which it suggests would be used in only a limited fashion for the purposes outlined in the Memorandum.

38. The Committee observes, however, that the power in the Bill is very wide and could be used to amend the definition of “dwelling” in almost any way, for example by breaking the link with the council tax regime entirely.

39. The Committee therefore asked the Executive to explain further why it considers that a delegated power is appropriate in this case and whether its exercise should be subject to affirmative procedure rather than the negative proposed.

40. The Executive repeated that the power is intended to be used in very narrow circumstances and refers by way of example to section 72(4) of the Local Government Finance Act 1992 which enables the Scottish Ministers to make an order, which is subject to negative parliamentary procedure (section 112 of the 1992 Act), to vary the definition of dwelling for council tax purposes.

41. The meaning of dwelling under the 1992 Act (subject to the modification in section 20(2) of the Bill in respect of part residential subjects) is presently defined in a manner which meets with the policy objectives of the Bill, namely, to reflect the fact that domestic premises should not be subject to the new water and sewerage services licence regime.

42. If, however, the definition of dwelling under the 1992 Act was further amended, the Executive would require to consider whether this would, to any extent, cut across the policy objectives for the Bill. If it would do so, the Executive needs to have the flexibility to be able to respond to that by further modification of the definition of dwelling for the purposes of the Bill.

43. Given this, the Executive considers that the power is necessary and, given the equivalent powers in the 1992 Act, negative resolution procedure is appropriate.

Report

44. The Committee appreciates that there may be a need to amend the definition and that any amendment to the definition in the 1992 Act, if made by subordinate legislation under that Act, could not necessarily (for technical reasons) be reflected in relation to the Bill without specific powers in the Bill.

45. The Committee notes that the 1992 Act is cited as a precedent but observes that delegated powers in Bills were not subject to specialist Parliamentary scrutiny until 1992 and the establishment in that year of the relevant Committee in the House of Lords.

46. The Committee normally recommends that where a power is taken to amend primary legislation it should be subject to affirmative procedure unless good cause is shown to the contrary. **The Committee is not convinced that the Executive has made a sufficient case for negative procedure and therefore, whilst approving the delegation of power, recommends that it should be subject to affirmative procedure rather than the negative procedure proposed in the Bill.**

Paragraph 1(7) of schedule 2 Consideration of licence applications

Background

47. This power enables the Scottish Ministers to prescribe by order the circumstances in which the detailed provisions relating to the consideration of licence applications by the Commission would not apply. It was not entirely clear to the Committee how this power would operate or in what circumstances it was proposed

that it be used. It asked whether, for example, it would it be possible to exercise the power only in respect of sub-paragraph (5) so that, if the Commission were minded to refuse an application, it would not have to give the applicant notice of this fact and whether it would be open to disapply sub-paragraph (6) and ignore representations.

Report

48. The Committee observed that whilst it is not unknown for order-making powers to be conferred that authorise exemptions from certain provisions, the proposed power seems to go wider than this and, in particular, to allow the provisions of the Bill to be modified. The Committee was unsure whether, in so far as the power would allow the substantive obligations imposed by sub-paragraphs (4) to (6) to be disapplied (as opposed to the detailed requirements to be specified in orders), negative procedure would provide sufficient Parliamentary control. The Committee therefore asked for further explanation and justification of the power.

49. The Executive explains in its response the reasoning behind the provision but, in view of the Committee's concerns, is considering further whether there are other ways to address these matters. **The Committee therefore draws the Executive's response to the attention of the lead Committee which it may wish to pursue at Stage 2.**

50. The Committee has no further comment to make on the Bill at Stage 1.

Appendix 1

SCOTTISH EXECUTIVE MEMORANDUM TO THE SUBORDINATE LEGISLATION COMMITTEE ON SUBORDINATE LEGISLATION PROVISIONS

WATER SERVICES ETC. (SCOTLAND) BILL

Provisions Conferring Power to Make Subordinate Legislation

Purpose

This memorandum has been prepared by the Scottish Executive to assist the Subordinate Legislation Committee in its consideration, in accordance with Rule 9.6.2 of the Parliament's Standing Orders, of the provisions in the Water Services etc. (Scotland) Bill which confer power to make subordinate legislation. It describes the purpose of each such provision and explains the reasons why these matters have been left to subordinate legislation, rather than included in the Bill.

Outline and scope of the Bill

The objective of this Bill, as provided for in the Policy Memorandum accompanying the Bill, is to strengthen the regulatory framework for the water industry, ensuring that there is a robust, transparent regime that operates in the interests of all customers. The Bill also provides certainty for the water industry, and secures the Scottish Ministers' public health, environmental protection and social policy objectives by prohibiting common carriage on the public water and sewerage networks, and prohibiting retail competition for household customers. In addition the Bill contains provisions relating to the Coal Authority.

The Bill is in 4 parts:

Part 1, The Water Industry Commission for Scotland

Part 1 replaces the office of the Water Industry Commissioner ("the Commissioner") established under the Water Industry (Scotland) Act 2002, with a body corporate, the Water Industry Commission ("the Commission"), to improve the transparency, accountability and consistency of regulation in the water industry.

Part 2, Provision of Water and Sewerage Services

Part 2 of the Bill makes a series of provisions regarding the provision of water and sewerage services, including a prohibition of common carriage on the water and sewerage networks; the establishment of a licensing regime for retail competition for non-household premises; and enabling Scottish Water to establish a subsidiary for the purposes of applying for licences under the Bill.

Part 3, Coal Mine Water Pollution

Part 3 of the Bill makes provision regarding coal mine water pollution, providing a statutory basis for the remediation programme carried out by the Coal Authority to tackle and prevent pollution.

Part 4, Miscellaneous and General

Part 4 of the Bill makes miscellaneous and general provision, including the procedure for exercising the order and regulation making powers provided under the Bill. As identified in section 27 of the Bill, the following subordinate legislation powers are contained in the Bill:

Delegated Powers

Part 1

Section 2 Water Industry Commissioner for Scotland

Power conferred on:	The Scottish Ministers
Power exercisable by:	Order made by Statutory Instrument
Parliamentary procedure:	Negative resolution procedure

Section 1 of the Bill, by amendment of section 1 of the Water Industry (Scotland) Act 2002 (“the 2002 Act”), establishes the Water Industry Commission for Scotland, to replace the office of the Water Industry Commissioner. Section 2 enables the Scottish Ministers to dissolve the office of the current Commissioner, on such date as is appointed by order. This section will allow Ministers to dissolve the office of the Commissioner once the new Commission is established.

Reason for taking this power

It is considered that negative resolution procedure is the most appropriate procedure for exercising this power. Full Parliamentary scrutiny is not considered to be required as the dissolution of the office of the Commissioner is as a consequence of the establishment of the Commission. The establishment of the Commission is the substantive policy objective, and as such is subject to full Parliamentary scrutiny in relation to the provisions of the Bill as a whole.

Part 2

Section 4(7) Exceptions to offences regarding the public water supply system

Powers conferred on:	The Scottish Ministers
Power exercisable by:	Regulations made by Statutory Instrument
Parliamentary procedure:	Affirmative resolution procedure

Section 4 prohibits common carriage on the public water supply system and retail competition in water services in relation to domestic customers. It does so by making it an offence for anyone other than Scottish Water or someone acting on its behalf to introduce water into the public water supply system; use the public water supply system to supply water to the premises of another person; or make arrangements for the supply of water to the premises of another person through the public water supply system.

Reason for taking this power

Section 4(7) enables the Scottish Ministers to make regulations specifying circumstances where these prohibitions do not apply, or persons or categories of

person to which they do not apply, or only apply to a certain extent. It is envisaged that these powers would be used if it emerged in practice that the prohibitions were catching activities that it had not been the Scottish Ministers' intention to prohibit. If this turned out to be the case, it would be necessary to amend the provisions establishing the prohibitions in order for them to have the original intended effect. Since this power could have an effect on the fundamental provisions of the Bill, provision is made for any regulations made under this section to be subject to affirmative parliamentary procedure. In addition, the Scottish Ministers are required to consult on any regulations made under this section.

Section 5(7) Exceptions to offences regarding the public sewerage system

Powers conferred on:	The Scottish Ministers
Power exercisable by:	Regulations made by Statutory Instrument
Parliamentary procedure:	Affirmative resolution procedure

As with section 4 of the Bill which deals with the public water supply system, section 5 makes equivalent provision to prohibit common carriage and limit retail competition in relation to the public sewerage system and, among other things, makes it an offence for anyone other than Scottish Water or someone acting on its behalf to draw sewage from that system; use that system to dispose of sewage from the premises of another person; or make arrangements for the provision of sewerage to or the disposal of sewage from the premises of another person through that system.

Reason for taking this power

As with section 4(7) of the Bill, section 5(7) enables the Scottish Ministers to make regulations specifying circumstances where these prohibitions do not apply, to also be used if it emerged in practice that the prohibitions were catching activities that it had not been the Scottish Ministers' intention to prohibit. Once again, given the significance of the power, such regulations would be subject to affirmative parliamentary procedure and prior consultation.

Section 7(2) Granting of a licence

Powers conferred on:	The Scottish Ministers
Power exercisable by:	Order made by Statutory Instrument
Parliamentary procedure:	Negative resolution procedure

Section 6 affords the Water Industry Commission powers to grant licences to persons authorising them to provide retail services in relation to water and sewerage services, in respect of premises connected to the public networks which are not dwellings.

Section 7 provides that the Commission may only grant such a licence if it is satisfied that the applicant can adequately perform the activities authorised by the licence. In assessing the ability of the applicant to do this, the Commission must have regard to the knowledge, experience, expertise, financial acumen and business viability of the applicant. Section 7(2) enables the Scottish Ministers to specify additional matters which might be relevant to the Commission's consideration as to whether to grant a licence, which the Commission would be obliged to take into account when considering licence applications.

Reason for taking this power

The power is necessary to allow the Scottish Ministers to ensure as far as possible that licence holders from the outset are to be judged by reference to meaningful criteria on their ability to provide a consistent and reliable service to their customers, and provides for flexibility to respond to any unforeseen circumstances in relation to assessing the qualities of prospective licence holders. It is not at present anticipated that the power will be applied in anything other than exceptional circumstances, since the list of considerations provided for at section 7(2) of the Bill is considered to provide the Commission with sufficient scope to determine an applicant's suitability. It is considered that negative resolution procedure provides sufficient Parliamentary scrutiny for this power.

Section 9(5) Commission's power to charge fees

Power conferred on:	The Scottish Ministers
Power exercisable by:	Order made by Statutory Instrument
Parliamentary procedure:	Negative resolution procedure

Section 9 provides for the Commission to obtain information from water and sewerage services providers as well as giving it powers, in subsection (5), to charge them fees for certain matters in relation to the exercise of its licensing functions. The licensing functions are set out in sections 6 to 11 of, and schedule 2 to, the Bill. The matters in respect of which the Commission may charge fees are to be specified by the Scottish Ministers by order.

Reason for taking this power

The subject matter of this power is a detailed operational matter and subordinate legislation is therefore more appropriate to ensure that the Commission has powers to charge fees for the range of activities it will have to carry out in connection with its licensing functions, such as, for example, processing licensing applications and taking associated enforcement action whilst affording flexibility to respond to changing circumstances resulting from the operation of the new regime. As indicated in the Financial Memorandum, this power will be used to ensure that licence holders will meet the ongoing costs of the Commission for operating the new licensing regime.

Section 16(3) Notices of Discontinuation of supply of water

Power conferred on:	The Scottish Ministers
Power exercisable by:	Order made by Statutory Instrument
Parliamentary procedure:	Negative resolution procedure

Section 16 enables the holder of a water services licence to request Scottish Water to discontinue a supply of water to premises which that licence holder has arranged to provide with water services. Scottish Water must carry out this request provided that the conditions of the disconnection code (to be made under section 17) are met, and provided that the disconnection does not affect any supply of water for domestic purposes, or any supply of water to premises other than the premises in question.

Section 16(2) provides that a water services licence holder, at least 14 days before making such a request to Scottish Water, must serve a notice on the occupier of the premises in question, and on Scottish Water and the Commission, informing them of the intention to make the request to disconnect. Section 16(3) enables the Scottish Ministers to make an order prescribing the form and content of such notices.

Reason for taking this power

It is not considered necessary to define in detail the form and content of the notice on the face of the Bill and that this is more appropriate for secondary legislation. This also affords sufficient flexibility to make amendments to these details if required in light of the operation of the new regime. In any event, the substantive policy on disconnection is contained in the Bill (sections 16 and 17), and accordingly will be subject to Parliamentary scrutiny.

Section 19 Powers of the Scottish Ministers

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Statutory Instrument
Parliamentary procedure: Affirmative resolution procedure

Section 19 inserts a new section 56B into the 2002 Act. Section 56 of the 2002 Act already gives Scottish Ministers wide powers of direction over Scottish Water in relation to the exercise of its powers and functions. Section 56B enables the Scottish Ministers to make an order conferring on Scottish Water additional or supplementary functions relating to the provision of water and sewerage services. In effect these will become part of Scottish Water's core functions (as defined in section 70(2) of the 2002 Act) and will require to be taken into account by the Commission, when assessing Scottish Water's revenue requirements under the new regime for charging as set out in the amendments to the 2002 Act made by section 19 of the Bill.

Reason for taking this power

The making of an order under new section 56B is subject to affirmative procedure (as ensured by schedule 5, paragraph 7(7) of the Bill, which amends section 68 of the 2002 Act), ensuring that any amendment of Scottish Water's core functions (as defined by section 70(2) of the 2002 Act) will be subject to appropriate Parliamentary scrutiny, given its significance, and is subject to prior consultation with Scottish Water and the Commission.

Section 20(3) Meaning of "dwelling" in relation to eligible premises

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Statutory Instrument
Parliamentary procedure: Negative resolution procedure

Section 20 defines "eligible premises" for the purposes of the licensing regime provided for at Part 2 of, and schedule 2, to the Bill. A licensed provider can make arrangements to provide services to customers in respect of such premises without contravening the general prohibitions in sections 4(3) and 5(3). By linking the definition to premises other than a "dwelling" for council tax purposes (within the meaning of Part 2 of the Local Government Finance Act 1992 ("the 1992 Act")), the

main purpose is to ensure that licensed providers cannot make arrangements to provide services to households. Section 20(3) enables the Scottish Ministers to vary, by order, the meaning of “dwelling”.

Reason for taking this power

Section 20(2), however, already recognises that the regime under the 1992 Act to define a dwelling for council tax purposes might operate to exclude premises which, as a matter of policy, there would be no good reason to exclude from the scope of application of the new licensing regime under this Bill, such as “the residential part of part residential subjects”. This means that premises which are technically residential but which form part of a building whose main purpose is to function as a business, for example, a care home, are not excluded from the scope of application of the new licensing regime for that reason alone. It is envisaged that the power under section 20(3) might be exercised should the definition of “dwelling” in the 1992 Act be further amended in a way which cuts across the policy objectives for this Bill. In the same way that the power to amend the definition of “dwelling” in section 72(4) of the 1992 Act itself can be varied under negative resolution procedure (see section 113 of the 1992 Act), subordinate legislation is considered appropriate here as the power is intended to be exercised only to ensure the policy intentions provided for in the Bill continue to be maintained.

Section 26 Ancillary provision

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Statutory Instrument
Parliamentary procedure: Negative resolution procedure, unless the Order amends primary legislation, in which case affirmative resolution procedure.

Section 26 enables the Scottish Ministers to make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes or in consequence of the Bill.

Reason for taking this power

Schedule 5 of the Bill already contains amendments of enactments in light of the substantive provisions of the Bill. This power is required in the event that it becomes apparent, after enactment, that further legislative provision is required to fully implement the policy of the Bill. It is considered appropriate for such provision to be made by subordinate legislation. Section 27 provides that where an order is to be made under section 26 and the order does not amend primary legislation, negative resolution procedure will be used. Where it is intended that primary legislation is amended, the Bill provides for the closer Parliamentary scrutiny afforded by the affirmative resolution procedure.

Section 30 Short title and commencement

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Statutory Instrument
Parliamentary procedure: No parliamentary procedure

Section 30 provides for the short title and commencement arrangements for the Bill. Section 30(2) provides for the Scottish Ministers, by order, to appoint a day when the provisions of the Bill are to come into force, and section 30(3) provides that different days may be appointed for different purposes.

Reason for taking this power

This is a standard order making power to ensure effective commencement of the Bill.

Paragraph 1(1) of Schedule 2 Licence applications

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Statutory Instrument
Parliamentary procedure: Negative resolution procedure

Further to Part 2 of the Bill, schedule 2 provides more detail on the operation of the licensing regime. Paragraph 1 concerns applications for licences. Paragraph 1(1) provides that the Scottish Ministers may specify in an order the exact form and information to be contained in an application for a water or sewerage services licence.

Reason for taking this power

As with the power in section 16(3) of the Bill (above), the detailed content of licence applications is appropriate to be set out in subordinate legislation for flexibility and given that these relate to technical matters arising from the operation of the new licensing regime.

Paragraph 1(4) of Schedule 2 Notices of licence applications

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Statutory Instrument
Parliamentary procedure: Negative resolution procedure

Paragraph 1(4) requires applicants for licences to publish a notice of their application, explaining the procedure whereby anyone can make a representation to the Commission about the application. The time within which the notice must be published, and the additional information it must contain, is to be specified by the Scottish Ministers by order.

Reason for taking this power

As with the power in section 16(3) of the Bill (described above), the subject matter of the power is a detailed operational matter and subordinate legislation is therefore more appropriate, and affords the Scottish Ministers flexibility to respond to changing circumstances resulting from the operation of the licensing regime.

Paragraph 1(7) of Schedule 2 Consideration of licence applications

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Statutory Instrument
Parliamentary procedure: Negative resolution procedure

Sub-paragraphs (4) to (6) of paragraph 1 of Schedule 2 provide that an applicant for a licence must publish a notice of their application; where the Commission plans to refuse an application, it must give the applicant notice of this, and specify a timescale within which the applicant may make representations to the Commission about the planned refusal; the Commission must take into account any representations made by the applicant, or any other person, in determining the application. Paragraph 1(7) enables the Scottish Ministers to make an order specifying circumstances in which these provisions do not apply.

Reason for taking this power

It is anticipated that this power will be exercised should the operation of the licensing regime highlight that certain classes of application ought not to be subject to the general procedures provided for at subparagraphs (4) to (6). Subordinate legislation is considered to be the most appropriate for this detailed operational matter and negative resolution procedure affords Parliament a sufficient degree of scrutiny.

Paragraphs 11(1) and 11(2)(g) of Schedule 2 Register of licences

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Statutory Instrument
Parliamentary procedure: Negative resolution procedure

Paragraph 11 provides that the Commission must keep a register of all water and sewerage services licences. Paragraph 11(2) prescribes the information which is to be included in the register. In this way policy intention behind this provision is currently contained on the face of the Bill. Paragraph 11(1) enables the Scottish Ministers, by order, to prescribe the manner in which the register is to be kept, and paragraph 11(2)(g) enables the Scottish Ministers to specify additional information to be included in the register.

Reason for taking this power

Once again, it is considered unnecessary to set out the detail of this on the face of the Bill. The subject matter of the power is a detailed operational matter and subordinate legislation is therefore more appropriate, and affords the Scottish Ministers flexibility to amend these details in the light of the operation of the new licensing regime. Negative resolution procedure affords the Parliament a sufficient degree of scrutiny.

Appendix 2

Water Services etc. (Scotland) Bill at Stage 1

Thank you for your letter of 28 September 2004 in which you requested an explanation of a number of matters in respect of the above. We set out our response in relation to each matter below, with apologies for not being able to meet your original deadline and with thanks for the slight extension given.

PART 2

Section 4(7) Exceptions to offences regarding the public water supply system

Section 5(7) Exceptions to offences regarding the public sewerage system

In the Committee's view and, as the Executive recognises, these powers could have a fundamental effect on the way in which the prohibitions operate and thereby on the fundamental provisions of the Bill.

In the Committee's view these powers should be subject at the very least to affirmative procedure and a requirement of prior consultation. However, given the use to which they might be put, the Committee is considering whether the provisions are more suited to super-affirmative procedure or suited to delegated powers at all. The Committee asks for the Executive's view and whether it would consider that such powers might more properly appear on the face of the Bill.

The Executive responds as follows:

Sections 4(7) and 5(7) of the Bill enable the Scottish Ministers to make Regulations to provide for exceptions to the offence provisions provided for at sections 4(1) to (3) and 5(1) to (3). As the Executive advised in its Memorandum to the Committee, it is intended that these powers be exercised only where it emerges that the offences, which are broad in scope, catch activities that it had not been the Scottish Ministers' intention to prohibit.

It is not the Bill's intention to inadvertently restrict Scottish Water's continuing ability, in accordance with existing statutory powers, to make arrangements with third parties in connection with the provision of water and sewerage services. Sections 4 and 5 of the Bill contain provisions which address one specific circumstance that might otherwise be caught by the offences contained in these sections. Sections 4(5) and 5(5), exempt third parties supplying water or providing sewerage services to others with the help of services provided by Scottish Water under section 30 of the Water Industry (Scotland) Act 2002 from the offences.

However, given the width of Scottish Water's existing powers, it is difficult to predict at this stage all of the circumstances in which legitimate arrangements with third parties might be caught by the broad offence provisions in a way which was not intended. Some of these may only emerge later, once the provisions have come into force. Accordingly, the Executive remains of the view that the reserve powers in sections 4(7) and 5(7) of the Bill are necessary, to reflect Scottish Water's continuing

flexibility to enter into arrangements with third parties in connection with the provisions of water and sewerage services.

In recognition of the fact that the making of such Regulations could have an effect on the fundamental provisions of the Bill, sections 4(8) and 5(8) provide that the Scottish Ministers must consult on any Regulations to be made under sections 4(7) or 5(7), and section 27(4) of the Bill provides that such Regulations are to be subject to affirmative parliamentary procedure. The Executive considers this provides for an appropriate degree of public consultation and Parliamentary scrutiny.

Section 17 Disconnections Code

Section 17 contains substantive policy on disconnections. Section 16(6)(a) provides that compliance with the code is one of the conditions that must be satisfied if a request by a service provider to discontinue services is to be granted. The Committee considers that there may be a case for the code to be subject to some degree of more formal Parliamentary supervision such as laying the code in draft before the Parliament for approval by affirmative resolution or requiring that the code be confirmed by order made by the Ministers subject to negative procedure. In this regard, the Committee notes the example of the framework document under the Fire Services Bill also before it at Stage 1. The Committee asks the Executive for comment.

The Executive responds as follows:

The Executive notes the Committee's suggestion that the Disconnections Code, which is to be made by the Water Industry Commission for Scotland, be subject to a degree of more formal parliamentary supervision.

However, at present, disconnection of all water supplies is essentially an operational matter for Scottish Water, taking into account the circumstances of each case. As indicated, section 16(1) of the Bill makes specific provision for the discontinuance of non-domestic water supplies, at the request of licensed water service providers. The Executive considered that, given the new procedure, the regulator should be required to set out, having consulted with the industry (as required by section 17(4)), essentially, a code of best practice as regards disconnections in accordance with these provisions. It is not, however, intended that the code rewrite or extend the provisions of section 16 which place in statute the key provisions which must be observed in considering a disconnection. In particular, section 16(6) ensure that any disconnection must not adversely affect any supply of water to premises for domestic purposes or any supply to any other premises.

The Bill therefore takes provisions which are at present left to the discretion of the industry and instead requires the regulator, with its responsibility to promote the customer interest, to set out a binding Code. Section 17(4) requires the regulator, in drawing up a Code, to consult on it, including the Convener of the Water Customer Consultation Panels who have a further responsibility to represent the customer interest.

In those circumstances, the Executive considers that it is unnecessary for provision to be brought into effect by the Scottish Ministers by order.

Section 20(3) Meaning of “dwelling” in relation to eligible premises

The Executive states that the power would be used in only a limited fashion for the purposes outlined in the Memorandum. The Committee observes that the power in the Bill is nevertheless drafted very widely and could be used to amend the definition of “dwelling” in almost any way, for example by breaking the link with the council tax regime entirely.

The Committee asks the Executive to explain further why it considers that delegated powers are appropriate in this case and whether their exercise should be subject to affirmative procedure rather than the negative proposed.

The Executive responds as follows:

The Executive notes the Committee’s observation that the power provided for under section 20(3) of the Bill is widely drafted.

However, the power is intended to be used in very narrow circumstances. For example, section 72(4) of the Local Government Finance Act 1992 enables the Scottish Ministers to make an order, which is subject to negative parliamentary procedure (section 112 of the 1992 Act), to vary the definition of dwelling for council tax purposes.

The meaning of dwelling under the 1992 Act (subject to the modification in section 20(2) of the Bill in respect of part residential subjects) is presently defined in a manner which meets with the policy objectives of the Bill, namely, to reflect the fact that domestic premises should not be subject to the new water and sewerage services licence regime.

If, however, the definition of dwelling under the 1992 Act was further amended, the Executive would require to consider whether this would, to any extent, cut across the policy objectives for the Bill. If it would do so, the Executive needs to have the flexibility to be able to respond to that by further modification of the definition of dwelling for the purposes of the Bill.

Given this, the Executive considers that the power is necessary and, given the equivalent powers in the 1992 Act, negative resolution procedure is appropriate.

Paragraph 1(7) of schedule 2 Consideration of licence applications

It is also not entirely clear to the Committee how this power would operate or in what circumstances it is proposed that it be used. For example, would it be possible to exercise the power only in respect of sub-paragraph (5) so that, if the Commission were minded to refuse an application, it would not have to give the applicant notice of this fact? Would it be open to disapply sub-paragraph (6) and ignore representations?

The Committee observes that whilst it is not unknown for order-making powers to be conferred that authorise exemptions from certain provisions, the proposed power seems to go wider than this and in particular to allow the provisions of the Bill to be modified. The Committee is unsure whether, in so far as the power would allow the substantive obligations imposed by sub-paragraphs (4) to (6) to be disapplied (as opposed to the detailed requirements to be specified in orders), negative procedure would provide sufficient Parliamentary control. The Committee therefore asks for further explanation and justification of the power.

The Executive responds as follows:

In originally framing this provision, we had in mind the fact that, before the provisions are commenced more generally, the entity to be established by Scottish Water by virtue of a requirement in accordance with section 12 of the Bill, would require in the first instance to apply for a licence under Part 2 of the Bill to provide water and sewerage services. During that period, it was considered that there may be a case for a simplified applications procedure to be in place. It was also considered that there may be circumstances in which non-substantive amendments of existing licences e.g. to correct factual errors in the original licence, might be facilitated by means of a simplified procedure.

However, in light of the Committee's concerns, we are considering further whether there are other ways to address these matters.

We hope that this is of assistance to the Committee in its further deliberations concerning the Bill. We would of course be happy to provide further clarification if that would be helpful.

Scottish Executive

3rd October 2004



SCOTTISH EXECUTIVE

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RFin October 2004

Dear Ms Boyack

When I appeared before your Committee on 5 October, I undertook to comment on the disparity in cost estimates for establishing the market mechanism and switching engine required for licensed retail competition under the Water Services etc. (Scotland) Bill.

I continue to stand by the estimates I gave the Parliament in the Financial Memorandum which accompanies the Bill: we believe that we have provided for a simple market where costs will be reasonable. I concede that they are estimates and work continues on improving them. In considering the range of possible costs associated with the Bill, however, I must emphasise my belief that the costs, even if they lie at the higher end of this range, are far outweighed by the benefits of this legislation. In strengthening the regulation of the industry, increasing accountability, and providing a robust framework for any competition which may develop, the Bill ensures protection for domestic customers and stability for the future of the water industry in Scotland.

I have now had the benefit of considering the research produced for Scottish Water by IBM Consulting upon which its estimates are based. but the first observation I make is that several of the key assumptions listed in it are at odds with those proposed by the Executive and the Water Industry Commissioner and set out in the Financial Memorandum. These differences go some way to explain the difference in costs.

Our consideration of the research finds that Scottish Water's figure for establishing market mechanisms and a switching engine is based on very different assumptions about the complexity and division of roles and responsibilities in the market, resulting in estimates of much greater total costs than estimated by the Executive. As I stated when I appeared before you, our belief is that retail competition in the water industry in the absence of common carriage should be relatively simple and requires none of the complex balancing of supply and demand typical of the gas and electricity markets. However, IBM's costings assume that this type of data does require to be collected and handled, but provides no explanation as to why this is necessary.

My further concern is that in the model envisaged by IBM, the majority of work establishing the market mechanisms appears to be the responsibility of the wholesale part of Scottish Water, whereas the legislation clearly requires this to be carried out by the Water Industry Commission. Given this different allocation of work, which is reflected in Scottish Water's higher estimate of the cost of establishing the market mechanisms, it is surprising that Scottish Water do not suggest a commensurate reduction in the costs for the Water Industry Commission. In my view, this work would only be required by one party, and for reasons of avoiding serious risk of challenge from new entrants, this must be the Water Industry Commission.

I am sorry that I cannot provide an exact reconciliation of the difference, but I hope that in setting out two reasons to believe the total to be closer to that estimated in the Financial Memorandum, I can reassure your Committee to some extent. It is an issue that I take very seriously and, while I think it likely that there would be always be a range associated with the possible costs, I will continue to examine the issue with a view to narrowing this.

In particular, we have funded work by Shepherd and Wedderburn on behalf of the Water Industry Commissioner to carry out a detailed scoping study on the activity required to establish the licensing framework and the costs of this. This study is due to be completed and published shortly.

I hope this is helpful.

Susan Murie

ROSS FINNIE

[Approved by the Minister
and signed in his absence]

SUPPLEMENTARY SUBMISSION FROM THE WATER CUSTOMER CONSULTATION PANELS

Thank you for your letter, and the opportunity to comment on the Minister's proposals on the future role and remit of the Panels. We welcome the Minister's proposals, and subject to sufficient resources being made available, we believe that we will be in a position to represent the interests of customers in a much more effective way, and will do so on the basis of evidence based research and analysis. We would be concerned if the Committee were to focus solely on complaints handling which forms an important but relatively small element of the work that we should be undertaking as the customer representative organisation.

Our understanding of the current complaints process is that in the first instance the customer should contact Scottish Water. Both the WIC (Water Industry Commissioner) and the Panels undertake to direct customers to this step where appropriate, if it has not been taken. Where customers are dissatisfied with Scottish Water's response, they may choose to direct their complaints to a higher level within Scottish Water, or to seek the advice and assistance of the WIC. The WIC then has the power to make representation to Scottish Water on the customer's behalf and to secure a response from Scottish Water within an agreed timeframe.

We understand that the WIC will be providing the Committee with detail on the levels and complexities of current complaints. This may provide a better gauge for understanding where confusion for customers has arisen. We believe there should be no distinction between domestic and non-domestic customers, and that individual customer complaints fall into either practical or policy complaints. Broadly speaking, the former are the domain of the WIC and the latter that of the Panels. Distinguishing and separating out these issues can often be difficult, and certainly unclear for customers.

We agree that the former (practical complaints) should become the responsibility of the Convener's office, and the latter remain with the Panels. This brings clarity to the process by ensuring customer complaints of either nature fall within the remit of one body, the customer representative organisation.

We would also want to take the opportunity to review fully the current system in detail, to be confident that, on undertaking complaints handling, the needs and expectations of customers would be met. We would wish to take the interim period before transfer to develop a complaints process that drew from best practice, and to test the adequacy of Scottish Water's internal complaints procedures. We are aware that the trend in Scotland, England, and Wales shows a modest increase in complaints from customers. That trend needs to be recognised when developing the new system.

For the Convener's office to take on the role of second tier complaints handling, the organisation would require adequate powers to address complaints, both individual (practical) and generic (policy), on behalf of customers. The Minister's proposal to extend the Panels' power to recommend more than covers policy complaints, and secures a response on these matters. Widening the scope to include Ministers, and all industry regulators, recognises that policy complaints often raise issues beyond

Scottish Water. To be in a position to make informed and in depth recommendations the Panels need to have an adequately resourced policy research capacity.

For individual practical complaints, a well constructed, easily understood, and timely framework must be built between ourselves and Scottish Water to ensure the best possible outcome for the customer. This would include provision for escalation when required. The Panels are keen for Scottish Water to drive forward its customer service improvements, and enhance its own internal complaints procedures. Scottish Water is best placed to bring about resolution in these cases. The Panels will have a strong role in monitoring Scottish Water's effectiveness in this regard.

With regard to emergencies, we would expect to respond to any concern about the way in which emergencies have been managed. There would be occasions where we would respond to a direct individual customer complaint, to a request from Ministers, or from a regulator. There may also be circumstances where we would, at our own initiative, enquire into the management of an emergency.

It should be a key indicator of performance for the industry that there is a reduction in volume of complaints and concerns from customers. This may seem obvious in theory, but is often lost in practice. Complaints handling should be viewed within the overall framework of the industry.

The Minister's proposals to involve us at the policy development stage, and to give us the power to recommend across the industry thereafter, creates many valuable opportunities to advocate the customer interest. We hope that this will lead in time to minimising the need for customers to raise concerns or complaints. We need to have adequate policy and research resources to address the advocacy role.

We would also like to draw the Committee's attention to the recent research ["What customers expect of the Consumer Council for Water"](#), conducted for WaterVoice, and enclose a copy of the executive summary. The results provide a good focus for further thinking on future development of the Panels.

SUPPLEMENTARY SUBMISSION FROM THE WATER INDUSTRY COMMISSIONER FOR SCOTLAND

I am pleased to have the opportunity to address the Minister's proposal to strengthen the role of the Water Customer Consultation Panels and in particular to transfer responsibility for complaint handling to the Convenor of the WCCP. This letter outlines:

- Our current process for handling complaints;
- The resources involved in handling complaints;
- Potential advantages for customers in the Minister's proposals;
- Stakeholder consultation, water environment or local government related complaints; and
- Impact on the proposed Water Industry Commission.

Our current process for handling complaints

We have noted a large increase in the number of complaints from customers of the water industry in Scotland. The following table shows complaints, by category, in the past three years.

Complaint type	2002-03	% of Total	2003-04	% of Total	2004-05 (to date)	% of Total
Water Supply	55	9%	122	10%	42	10%
Water mains and pipes	62	10%	87	7%	40	9%
Water Pressure	27	4%	50	4%	16	4%
Sewerage Service	56	9%	68	5%	48	11%
Sewers and drains	28	5%	28	2%	13	3%
Billing	104	17%	208	17%	178	42%
Charges	211	35%	540	44%	54	13%
Administration	49	8%	66	5%	27	6%
Other	17	3%	71	6%	9	2%
Total	609		1240		427	

We use a three-tier process to handle complaints from both domestic and non-domestic customers.

- **Level one complaints:** If a customer has not complained to Scottish Water, we will forward a written complaint to Scottish Water and ask to be copied on the reply to the customer. If a customer telephones our Office and he has not yet contacted Scottish Water, we will ask the customer to telephone Scottish Water. We believe that it is important that Scottish Water has an appropriate opportunity to resolve any customer service issues.
- **Level two complaints:** When a customer has complained to Scottish Water and still believes that he has been unfairly dealt with, we will look at the complaint in some detail. There are normally two potential outcomes: firstly, we may consider that Scottish Water has handled the matter appropriately in which case we will seek to explain this to the customer; secondly, we may consider that the customer

does have reasonable cause to be dissatisfied. In this instance, we will write to Scottish Water outlining why we think their previous response was inappropriate. Level two complaints can typically arise for three reasons: firstly, some of Scottish Water's staff who deal with complaints seem to misinterpret the policies of their organisation (e.g. on response times); secondly, Scottish Water employees have redirected issues relating to charges to this Office, explaining that we approved the scheme of charges; thirdly, there are cases when customer complaints have not been dealt with appropriately either because of administrative failures or because Scottish water has no clear policy on the level of service issue.

In most cases, we are able to resolve level two complaints to the satisfaction of the customer.

- **Level three complaints:** If it proves not to be possible to address a customer's complaint, we may seek to launch a formal investigation into the handling of the complaint. Fortunately, such cases are very rare.

The resources involved in handling complaints

We currently have one dedicated complaints officer. He is managed by the Corporate Affairs Team Leader and assisted by other members of that team. If a complaint involves more specialist knowledge, the Corporate Affairs team can draw on expertise from other areas of the Office (e.g. investment and asset management and revenue and tariffs). We estimate that handling complaints accounts for approximately 1.5 full time equivalents in the Corporate Affairs team, costing c.£45,000, and perhaps as much as a further full time equivalent in terms of additional specialist advice on the issues raised in complaints from elsewhere in the office, costing c.£30,000. The total budgetary cost of this is therefore approximately £75,000, or 5% of the annual on-going budget of the Office.

Potential advantages for customers in the Minister's proposals

I support the proposed strengthening of the Water Customer Consultation Panels. In my evidence to the Committee I sought to explain that the determination of prices is essentially a technical exercise that establishes the cost of policy objectives that are set by Ministers. It is important that in setting prices we consider the interests of both all current customers and future customers and set prices that are financially sustainable (i.e. prices that do not favour either this or future generations). When we handle complaints, we have to ensure that we act in the general customer interest. It would not be appropriate for us to take a view on, for example, the social, environmental or public health policies of government.

In other utilities, the complaints handling function has been separated from the price setting function. In the energy industry, complaints are handled by Energywatch. In the water industry south of the border, the recent water Industry Act establishes a separate consumer council for water and formalises the independence of Water Voice from the regulator, Ofwat. Water Voice manages complaints and lobbies on issues that it considers are important to customers. This has recently included

questioning the proposed size of the environmental investment programme in England and Wales. Water Voice has questioned whether vulnerable customers should have to face significant increases in bills to finance extra investment in the environment.

I consider that such customer representation is an important function. It is, however, not consistent with the obligation on the price-setting organisation to assess the lowest sustainable price that is consistent with the objectives for industry that are established by Government. Government sets out its policy objectives for the water industry in England and Wales in guidance to Ofwat. I expect to get similar guidance from the Scottish Ministers in January.

The transfer of responsibility for the management of complaints is a sensible move to clarify the roles and responsibilities of both the proposed Water Industry Commission and the Water Customer Consultation Panels. The panels may seek to champion the case of a particular customer or group of customers, whereas the role of the Commission is likely to continue to be the promotion of the general customer interest, in other words ensuring that customers receive the best sustainable value for money possible.

The strengthening of the Panels will give them a clearer and more independent voice in representing customers. The handling of complaints is likely to highlight issues on which they may wish to do further research or to make representations to Ministers. Such representations may favour some customer groups to the detriment of others and it would therefore be appropriate for Ministers to decide whether it was appropriate to change an element of policy. It would, however, not be appropriate either for this Office or potentially the Commission to make any such representations that favour one customer group at the expense of another.

Stakeholder consultation, water environment or local government related complaints

From time to time we will receive complaints that relate to charging issues that are not within the control of Scottish Water or its economic regulator. These often concern the Council Tax band or the rateable value that has been allocated to a property. In such circumstances an appeal should be directed towards the local council. The broader principles of charging are a decision for Ministers and customers who consider the current charging mechanism to be unjust should draw this to the attention of Ministers. Clearly, it would not be consistent with my current statutory remit to intervene in such circumstances. This could, however, be an issue that the Water Customer Consultation Panels may wish to draw to the attention of Ministers. This would seem to be an additional advantage of the transfer of responsibility for complaint handling.

A second area of potential complaint relates to the management of flooding risk. Scottish Water clearly has a responsibility for the maintenance of the sewerage system, but many flooding incidents are caused by extreme weather conditions and not by an operational failure of the sewerage system. Responsibility for flooding is therefore split between different bodies including Scottish Water, local councils,

SEPA etc. It is clear that it may, in some instances, be appropriate for complaints to be handled by Scottish Water, but in many cases responsibility actually for preventing or managing the incident lies elsewhere.

The Water Customer Consultation Panels have recently agreed a Consultation Code for Scottish Water. My office had no role in the development of this code. The code is a useful step forward because the significant investment programme that Scottish Water will have to manage for the foreseeable future will impact local communities and businesses. It is important that there is appropriate consultation about how the activities of Scottish Water will impact the community and that accurate information is given about the duration of any disruption. It is not clear where responsibility for handling complaints about the Consultation Code lies.

My Office currently has responsibility for dealing with customer complaints. However, complaints about poor consultation may be from non-customers or from customers who do not receive benefit from a proposed investment, but who are impacted by the proposed disruption. Given that our responsibilities are to all customers, it would be difficult for us to deal with these complaints. It may be that the concerns of local stakeholders are valid, but that the proposed benefits to other customers are significant. I would suggest that the Water Customer Consultation Panels who were involved in the development of the Consultation Code would be better placed to handle any such complaints.

Impact on the proposed Water Industry Commission

I believe that the proposed strengthening of the WCCP is in the customer interest. It brings us more into line with the situation in other utilities (and the postal services and rail industries). Summary information about the types of complaint or response times is important to our overall measurement of customer service performance. It would be important that the WCCP made this available to the Commission. One possible way forward would be for the level of service report to be a joint publication between the Commission and the WCCP. This would be consistent with the situation south of the border.

SUPPLEMENTARY SUBMISSION (2) FROM SCOTTISH WATER

Thank you for your letter of 7 October 2004 requesting our views on the proposed changes to the powers and functions of the Water Customer Consultation Panels (WCCP).

Scottish Water supports the Minister's proposals and believes that they will both enhance the voice of the customer and provide clarity of purpose.

With regard to the specific point about complaint handling I would comment as follows –

There is the opportunity to mirror the existing complaints process, simply switching the role of complaint management from the Water Industry Commissioner for Scotland (WICS) to the WCCP. This would provide the quickest and least disruptive solution and would ensure parity with England and Wales.

Under the present agreed protocol Scottish Water is always given the opportunity to resolve the customer issue first i.e. WICS will simply pass on a complaint that has not been referred to Scottish Water in the first instance. This ensures that the relationship between Scottish Water and the customer is maintained and that simple issues can be resolved quickly. If Scottish Water cannot, or does not resolve the complaint and the customer contacts WICS then WICS will investigate the complaint and ask Scottish Water to report on actions taken previously and to explain what action will be taken to resolve the issue, or reasons why a resolution cannot be achieved.

All complaint types follow this protocol, save for general complaints about charging principles, where WICS staff will explain the principles to customers directly, without involving Scottish Water.

All WICS complaint traffic is sent through our Regulatory Mailbox and closely monitored to ensure compliance with the relevant Guaranteed Standard of ten working days.

WICS may well suggest a course of action to Scottish Water in order to help resolve an issue. However, the crucial point is that this is always done before responding to the customer to ensure that all relevant facts are known.

Moving responsibility from WICS to WCCP need not impact the above process, indeed it would be beneficial for WCCP to adopt the WICS approach as that has been developed over a number of years and strikes the right balance between ensuring due process and getting a speedy resolution for customers.

I hope these comments are of assistance to your Committee in its consideration of the proposed changes to the WCCP. I am very happy to discuss our views further with you if this would be helpful.

SUPPLEMENTARY SUBMISSION FROM THE FORUM OF PRIVATE BUSINESS, SCOTLAND

You will not be surprised to hear that, in principle, we approve of the proposed changes to the Water Services etc (Scotland) Bill to include powers of the Water Customer Consultation Panels. As you know we expressed concern that the panels and a complaints procedure seemed to have been omitted from the draft bill. We also advocated greater powers for the Panels to take up complaints on behalf of water consumers. So we can only welcome Mr Finnie's suggestions in principle.

Looking at the proposal in detail, we make the following points: -

- We are certainly in agreement that the panels should represent non-domestic as well as domestic water customers. Many smaller water users are likely to continue to use Scottish Water rather than an alternative supplier. The point about distribution and supply is valid and Scottish Water's responsibility for waste water and environmental control enhances that argument.
- We agree in principle that Panels should have a clear opportunity to voice consumer interests in the charge determination process.
- We also agree that the Panels should take over the handling of customer complaints. That's very much in line with our recommendations to your Committee, as you know. Asking the Commission to do this as well as regulate is akin to asking it to be gamekeeper and poacher at the same time.
- The Minister recommends that both individual and generic complaints should be so addressed. Maybe I should ask you to define the term 'generic' in this context. I take it to mean both sectoral complaints (e.g. a problem involving the food processing industry) or a particular group (e.g. the recent price increases that particularly hit the smallest water users). If that definition is correct, we agree. But there will be, from time to time, generic complaints that need particular solutions, perhaps beyond the powers of the proposed Panels. No system is perfect and no organisational set-up can prevent all anomalies and unfairnesses from happening. For example the long established valuation and rating system brings up anomalies at every revaluation. Individual complaints can be handled via the valuation appeals procedure but generic complaints may need ministerial intervention. For example, in 1985, the revaluation in Scotland brought some extraordinary results in certain places (e.g. the Borders and Angus) and in certain types of business (Retail and the licensed trade but not factories or offices). The bill that was rushed through Parliament (the predecessor to the revaluation transitional relief of today) with all-party support was a Ministerial intervention that saved many businesses. We urge you to retain that power to the Scottish Executive over our public water supply.
- Yes, the weakness of the present set-up is that the Panels have no statutory status. They have done a good job, but only as a sounding-box. Minutes of

public meetings were placed on their website and apparently went no further. Placing them on a statutory basis should make consumer representation more meaningful.

In conclusion we are in full agreement with the Minister's suggestions and it is a measure of the success of your Committee's work that this has been accepted.

Our only divergence from his proposal is that our members (66% of them) want the Scottish Ministers to retain an ultimate power of intervention.

SUPPLEMENTARY SUBMISSION FROM THE SCOTTISH CONSUMER COUNCIL

Thank you for giving the Scottish Consumer Council (SCC) the opportunity to comment to the Committee on the Minister's proposed changes to Stage 2 of the Water Services etc (Scotland) Bill. This response is written from the perspective of domestic consumers which is where our remit lies.

In our earlier written evidence to the Committee we highlighted our concerns that the Bill was lacking in its failure to provide for a statutory role for the Water Customer Consultation Panels at key stages within the new regulatory framework. We also emphasised the wider issues that would need to be addressed 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. We therefore welcome the Scottish Executive's general intention to enhance the role of the Panels. Our comments on the Minister's detailed policy proposals, as set out in his letter to you of 4 October 2004, are detailed below.

Transfer responsibility for handling customer complaints to the Panels

In the event of Scottish Water being unable to resolve a customer complaint, the second avenue of redress for a customer currently lies with the office of the Water Industry Commissioner. We consider this to be anomalous in the context of the Commissioner (and subsequently the Commission)'s responsibility to balance the interests of the general customer base and the industry as a whole rather than advocate on behalf of specific customer groups. A complaints handling function should also be independent of any price setting responsibilities. Based on our own research experience and on research undertaken with consumers by others in Scotland, for example, the recent NHS review of its complaints procedure, we believe that the following general principles should apply in considering complaints handling procedures in the water industry. This view is broadly consistent with the previous work of both the Citizens Charter Complaints Task Force and the Cabinet Office's Service First initiative.

Stage One: Informal Resolution

We are content with the current wording of the Water Industry (Scotland) Act 2002 which provides that a complaint need not be investigated "if the complainer has not pursued the complaint with Scottish Water." It is accepted good practice that the provider of a good or a service should respond itself to the concerns of its customers and that it should have an accessible and speedy mechanism for doing so. The onus should always be on Scottish Water to provide optimum customer care by resolving complaints quickly and informally at the front line, and to provide a better service to future consumers through the lessons learned from its own complaints data.

Stage Two: Internal Review

Scottish Water should have in place an internal system of recourse for customers who remain unhappy after Stage One has been exhausted, overseen at a higher level and by members of the management team who have been un-involved in the initial stage. However, it will be important to ensure that having an internal second stage does not result in a protracted and bureaucratic system and that steps have been taken to ensure that it is seen to be fair in the eyes of the consumer.

Stage Three: Independent Review

The rationale for the third stage lies in providing consumers with an independent and impartial review of their complaint outwith the court system. In our view, there are two options open to the Scottish Executive:

The first option lies in utilizing the office of the Scottish Public Services Ombudsman (SPSO) in relation to Scottish Water, to both deal with individual, unresolved third tier complaints and investigate general cases of service failure. The Ombudsman's website lists its powers as extending over complaints about the Water Industry Commissioner (WIC) but refers customers of Scottish Water to the WIC. The responsibilities of the SPSO will have to be clarified in any case in the light of the Minister's proposed changes to the complaints handling function and the option to use or extend the existing offices and capacity of the SPSO as the third stage should be considered. The SPSO would have the teeth to intervene and require Scottish Water to resolve an individual issue or improve on an aspect of service failure.

The second option lies in transferring the complaints handling function to the Panels, as proposed by the Scottish Executive. This option is equally valid in ensuring an independent and impartial means of review for consumers who remain dissatisfied with Scottish Water's treatment of their complaint and it would sit well with the Panels' role as consumer interest advocates.

We do, however, have concerns about the Executive's view of how this might work in practice, and in conjunction with the additional proposals to enhance the Panels' role in relation to policy.

The Minister's letter is limited to stating that the small team in the Commissioner's office currently responsible for considering complaints would in future sit within the Convener's office. We understand that the WIC team comprises two people and the WIC office has informed us that it handled 609 complaints in 2002/03 and 1,240 complaints in 2003/04. We would expect this trend to continue to rise as Scottish Water's public profile increases, the structure of the industry changes and the expectations of consumers rise. Moreover, the scope for achieving real benefits for consumers may well be limited if the Panels are not concurrently bestowed with formal powers of intervention, rather than as, at present, relying on influencing and persuading.

Our work with other consumer organisations such as energywatch has given us a good picture of the resource-intensive nature of complaints handling. The National Audit Office too has published, in the last week, its report of a benchmarking exercise into the efficiency and effectiveness of energywatch and Postwatch¹. The NAO has reported that, in 2003/04, energywatch incurred direct staff costs of £5.4 million, 42% of its running costs, and Postwatch incurred £2 million, 20% of its running costs, on complaints handling. The report highlighted the considerable amount of staff time spent on complaints that varied in scale and complexity and many of which required considerable effort in resolving the issues with the service provider. The report also highlighted the dangers of staff time being tied up in audit and satisfaction monitoring of the internal complaints handling process rather than the outward effect of the market on the overall consumer experience.

This has been recognised at UK level by the DTI which is proposing to pass responsibility for complaints handling from consumer bodies to Consumer Direct, a new UK-wide information and advice line. The first phase of Consumer Direct was launched in Scotland in July 2004. The DTI

¹ National Audit Office, *Energywatch and Postwatch: Helping and Protecting Consumers*, October 2004, <http://www.nao.org.uk/whatsnew.htm>

report *Consumer Representation in the Regulated Industries*² raises the possibility of a Utilities Consumer Council for industries in reserved areas. The Council would have a central focus on working with policy makers, regulators and service providers on making markets work for consumers with the aim of reducing the number of complaints and preventing the issues that cause them from arising in the first place.

There is therefore a risk that reactive complaints handling could dominate the agenda of the Panels and skew the focus of their work to picking up the pieces when things go wrong. The NAO report highlights the dangers of relying on complaints data to identify problem areas as the number and profile of complaints may not accurately reflect the overall problems and experiences of consumers. This would divert its attention from making the water industry work for consumers from the beginning by undertaking the policy, advocating and influencing role envisaged by the Scottish Executive. Complaints handling by the Panels will only work for consumers if these aspects of the Panels role are given equal, and even greater consideration and allocation of resources.

Consumer organisations need to work from a base of evidence about how the market is working for all consumers. This means undertaking research on what consumers want and need from their water service, gaining further evidence by listening to and engaging with stakeholders, and having the expertise and the resources to develop, with Scottish Water and the Water Industry Commission, a forward, pro-active agenda for the industry.

We also believe that the current powers of the Water Industry Commissioner to audit Scottish Water's complaints handling should be transferred to the Panels as part of their remit to help Scottish Water deliver a better service for consumers and to help tackle the underlying causes of complaints. In England and Wales, this is a statutory function of the consumer body, Waterville, and it has a formal role into feeding into Ofwat's performance assessment framework of companies' performance.

Our position with regard to who should handle complaints can therefore be summarised as follows:

- It would not be appropriate for the Water Industry Commission to handle complaints.
- The independent review mechanism for complaints should lie with either the Panels or the Scottish Public Services Ombudsman.
- The respective merits of both options should be considered. The responsibilities of the SPSO with regard to the new structure of the water industry being proposed by the Bill should be clarified.
- The role of the Panels in handling complaints should not be seen in isolation from, or be allowed to subsume through lack of resources, its wider functions to develop evidence-based policy and to advocate and influence for change on behalf of consumers.
- Systems for sharing information about complaints trends and implications for service improvement between the complaints handler, the consumer body, the service provider and the regulator, will require to be established.

² DTI, *Consumer Representation in the Regulated Industries*, July 2004, http://www.dti.gov.uk/ccp/topics2/economic_regulation.htm

Make provision for the Panels to represent non-domestic as well as domestic customers

The SCC would not support this proposal and refer to this extract from our earlier written submission to the Committee:

“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”.

Our only additional comment to this position would be in relation to complaints handling. We have no data on the proportion of domestic and non-domestic complaints about the industry at the moment, whether by individuals or resourced representative groups, and the complexity and level of workload each different sector has generated for the WIC's office. We would want any move to widen the remit of the Panels to include the non-domestic sector to have taken full account of this data. We have some concern that the capacity of the Panels to deal with the needs of individual consumers and vulnerable groups will be compromised in having to respond to the more organized representations of business and the concerns of very large users. Many of these complaints are likely to be focused around the licence conditions set by the Commission and we see potential for a muddying of roles in this respect and for time wasted by the Panels in referring these issues onward to the Commission.

Give the Panels a clear point at which to input to Ministers' consideration of objectives for the industry

In our written evidence to the Committee, we considered that the consumer voice would be weakened by the absence of the Panels, as statutory consultees, from:

- 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 are therefore very pleased to see the Minister's intention to add the Panels to the Commission and Scottish Water as the bodies that must be consulted in drawing up the statement of charging policy.

However, we would still wish to see the Panels having the other powers that we have asked for, particularly in relation to being consulted on the Commission's proposed charging determination. The Minister's letter says that the Panels will have a clear interest in policy objectives. Our view is that there is a subsequent, legitimate interest in seeing charges that reflect policy and that this is no different for the consumer body than it is for Scottish Water or Ministers as part of the consultation process.

We commented above about resources for the Panels and their capacity to undertake an enhanced role in policy, as proposed by the Minister. The Panels must be able to give an informed, evidence-based, and therefore credible policy contribution. The position that we outlined in our earlier evidence remains:

"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."

We also stand by our earlier position that, 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 and it ensures that a proper system for the sharing of information is sustainable and not reliant on individual working relationships or changes in policy.

Enhance the Panels' reporting function and out it on a statutory basis

We fully support enhancing the powers of the Panels to publish reports and to require the recipients to respond. This will bring greater public accountability and transparency for consumers and the public. We again emphasise our concerns about the capacity of the Panels to take on this additional function and do it well without an accompanying recognition that it will require additional resources.

We also fully support the proposal that the Panels should be required to lay their Annual Report before Parliament. This will enhance the accountability of the Panels as publicly-funded bodies.

SUBMISSION FROM THE FEDERATION OF SMALL BUSINESSES

Thank you for your invitation to respond to the proposed changes to the Water Customer Consultation Panels (WCCP) outlined by the Minister for Environment and Rural Affairs in his letter dated 4 October. We are pleased to see that our concerns about non-domestic customer representation following the introduction of retail competition have been addressed by the Minister.

I will deal with the Minister's proposals one by one, before answering some of the specific queries made in your letter:

- a) We support the proposal for the panels to represent both domestic and non-domestic customers, and believe it is essential that business customers have an effective customer representative even in a competitive market. It has been suggested in committee discussions that the panels do not want to represent non-domestic customers but Ian Smith, Convener of the WCCPs, has assured us that this is not the case.
- b) We agree that there must be a clear mechanism through which the panels can input to minister's consideration of objectives for the industry. Their role in dealing with all types of customer complaints means that the panels are the most appropriate body to advise ministers on the principles of charging as they affect broad customer groups, and we would recommend that the panels produce some form of annual report on the complaints they have received, with specific purpose of informing ministers' decision making.
- c) Again, we are happy to support this proposal. However, this will inevitably lead to an increase in the workload of the panels and we would seek assurances that they will be adequately resourced to carry out this work.
- d) We would agree to the strengthening of the panels' powers to publish reports and the requirement for the panels' annual report to be laid before Parliament.

In terms of how complaints are handled, we accept that customer complaints must first be directed to Scottish Water (or other supplier). However, we have particular concerns about Scottish Water's handling of specific customer complaints and know of various businesses which have had no resolution to a complaint several months after contacting Scottish Water. We therefore believe that a stringent timescale for resolving complaints should be applied before the complainant is able to take his/her case to the WCCPs.

We believe that the Water Industry Commission must have some form of statutory responsibility to consult the Water Customer Consultation Panels before finalising the next year's charging levels.

Finally, while we are happy with the Minister's broad proposals, we will of course have to consider the detailed amendments once put before Parliament.