

Water Resources (Scotland) Bill

Final Business and Regulatory Impact Assessment

Title of Proposal

Water Resources (Scotland) Bill

Purpose and intended effect

Background

The Scottish Government has developed the Water Resources (Scotland) Bill in order to update the law on the management of Scotland's water resources, to introduce new duties relating to their vision of Scotland as a Hydro Nation and set a legislative framework that will underpin other non-legislative activity. The cumulative effect of the new legislation in addition to the Hydro Nation programme of work will be a new focus and drive across the water sector in Scotland, highlighting how we can make best use of this important and valuable asset.

The Bill and its accompanying documents can be viewed on the Scottish Parliament website: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/52620.aspx>.

Part I – Development of Water Resources

Scottish Ministers wish to develop their vision for Scotland as a Hydro Nation such that Scotland is to be a country that regards water as part of its national and international identity, recognises that the sustainable management of its water resources are crucial to its future success and a key component of a growing low carbon economy with flourishing international trade.

In practical terms this means making best use of its abundant water resources for the people of Scotland, by developing the value of those water resources in economic, social and environmental terms and playing a strong role in the good governance of this critical global resource. Scottish Ministers' Hydro Nation agenda sets priorities for action on developing domestic and international trade and technology innovation, working with developing nations on practical water projects and promoting Scotland's academic excellence in water related fields.

Aspects of the Hydro Nation agenda can be achieved without legislation (for example there is an aspiration to develop Scotland's profile in the water sector internationally). However, the Bill can provide both a framework and imperative by setting out Scottish Ministers' intentions to take forward this agenda.

Part 2 - Control of Water Abstraction

The purpose of this Part of the Bill is to introduce a new framework to govern the abstraction of water over a specified threshold. Applicants will be required to seek Ministerial approval of their proposals to abstract. Existing abstractions and certain types of abstraction will be exempt from the regime, for example those that Scottish Water makes in the exercise of its core functions; abstractions of water for use in generating electricity by hydro-power; and abstractions for the purpose of irrigating agricultural land. The application process will be separate from the Controlled Activities Regulations (CAR) licensing regime that SEPA operates, where the impact on the environment of the proposed abstraction is considered. In future applications which fall within the eligibility criteria will need Ministerial approval as

well as a CAR licence in order to proceed.

Part 3 – Scottish Water’s Functions

The existing statutory framework ensures that Scottish Water is almost wholly focussed on the delivery of its core water and sewerage services. It does not envisage Scottish Water undertaking significant activities beyond those services. This part of the Bill gives Scottish Water new duties to develop the value of its assets and to promote the use of its assets for the generation of renewable energy. Scottish Water is expected to be proactive and dynamic and seeking such opportunities. Importantly, the Bill includes the safeguard that these activities must not undermine the delivery of Scottish Water’s core water and sewerage functions.

Additionally, the current statute regarding Scottish Water does not provide for Ministers to lend directly to a Scottish Water subsidiary, other than to Business Stream and Business Stream Holdings. Therefore any lending to a subsidiary, such as Horizons, has to be routed through Scottish Water. This results in water and sewerage customers bearing at least part of the risk of such loans, which is inappropriate and also administratively inefficient. The Bill provides for Scottish Ministers to have powers to make grants or lend to Scottish Water and all its subsidiaries.

Part 4 – Raw Water Quality

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

Part 5 – Non-Domestic Services

Under the framework set up in the Water Services etc. (Scotland) Act 2005, non-domestic customers receive water and sewerage services from their chosen licensed provider. A number of licensed providers operate in a competitive market in Scotland and supply water and sewerage services to the private, public and voluntary sectors. This market is comparatively new within Scotland and as it has matured a number of areas of detailed operation need to be addressed to ensure that the market is operating efficiently and that those receiving water and sewerage services pay for them.

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

other utilities.

Part 6 - Sewerage Network

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

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

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

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

Part 7 – Water Shortage Orders

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

Background and Rationale for Government intervention

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

water technology.

The Scottish Government considers that the good management of Scotland's water resources is fundamental to the Hydro Nation agenda. It is sensible to seek to legislate to improve that management wherever possible, in line with new knowledge, procedures and approaches. This Bill provides an opportunity to consider and update existing law and Scottish Ministers have listened to stakeholders in developing the provisions, and will continue to work with stakeholders in working on the practical implementation of the law.

Water Resources (Scotland) Bill (Part 1) – Development of Water Resources

The rationale for intervention is that the proposed legislation will bring purpose and impetus to the policy of developing Scotland as Hydro Nation, by placing a duty on Scottish Ministers to take reasonable steps to develop the value of Scotland's water resources and report to the Parliament on its implementation. Certain public bodies are identified as significant to the delivery of this agenda and promotes their collaborative involvement in developing Scotland's water resources. The bodies listed are Scottish Water, Scottish Environment Protection Agency, Scottish Natural Heritage, Scottish Enterprise and Highlands and Islands Enterprise, and this list can be changed if required in the future.

Water Resources (Scotland) Bill (Part 2) – Control of Water Abstraction

The rationale for intervention is the growing importance of Scotland's water resources as an economic asset that is increasingly in demand. Fresh water is a valuable but finite economic resource to Scotland. The proposed new consent regime will enable Ministers to consider proposals for new large scale abstractions to ensure they are in the interest of the people of Scotland.

Water Resources (Scotland) Bill (Part 3) – Scottish Water's Functions

The rationale for intervention is that Scottish Water is established by statute and therefore primary legislation is required if any changes are to be made to Scottish Water's functions, duties and powers.

The "Building a Hydro Nation" consultation set out the potential for Scottish Water to develop commercially, to use its assets to promote renewable generation and generally to support the Hydro Nation agenda. The Government considers that Scottish Water's considerable potential in these areas should be encouraged and recognised in legislation.

Water Resources (Scotland) Bill (Part 4) – Raw Water Quality

The rationale for intervention is to ensure that Scottish Water is able to deliver drinking water at least cost to customers. Managing drinking water in the catchment in a proactive manner should mean that there is less need for chemical treatments to be used to ensure the water is wholesome (fit for human consumption) and therefore cost customers less. Catchment management approaches have become more widely applied in recent years and is therefore reasonable to update the provisions of the Water (Scotland) Act 1980.

Water Resources (Scotland) Bill (Part 5) – Non-Domestic Services

The rationale for intervention is to ensure that the competitive retail market for water and wastewater services in Scotland is able to operate in an efficient manner.

Water Resources (Scotland) Bill (Part 6) - Sewerage Network

The rationale for intervention is that at present, with the exception of trade effluent licences, there are no controls on what enters sewers or drains with the water and pollution can result; this imbalance needs Government intervention to bring about change. These measures will ensure that trade effluent consents can be extended to cover Priority Substances and other substances that affect the water environment. Additionally, these measures will allow Scottish Water to investigate sources and pathways of these substances. This information can be used to inform Ministers concerning future policy and action.

The rationale for intervention on septic tank maintenance is that the existing mechanisms for maintenance of community septic tanks require all owners to reach an agreement and share costs, which can be difficult to achieve. When septic tanks are not maintained they can pose a risk to the water environment, the proposal means that a minority of owners can conduct maintenance and recover costs is an effective route to deliver the objectives of protection of the water environment.

Water Resources(Scotland) Bill (Part 7) – Water Shortage Orders

The existing drought management framework in Scotland is over twenty years old and needs to be refreshed to reflect changes to working practices. The proposed framework will ensure Scotland has a modern, flexible and proportionate framework for dealing with water shortages, with clear timescales for action and lines of responsibility.

Consultation

Public Consultation

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

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

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

The First Minister announced the intention to legislate in this area in the Programme for Government in September 2011. Detailed legislative proposals were drawn up and a 6 week consultation exercise on the publication “Scotland the Hydro Nation, Prospectus and Proposals for Legislation” was undertaken. In the prospectus part of the document, the Government described the programme of work that it was putting in place to develop what it

described as the Hydro Nation agenda. It made clear that these were initial steps in a long term and ambitious process. In addition to inviting comments on the document, officials undertook a range of meetings and workshops to involve those with an interest in the water industry, the academic sector, businesses and interested members of the public. The consultation paper can be viewed at: <http://www.scotland.gov.uk/Publications/2012/02/9536>. The summary of responses to the consultation can be viewed at: <http://www.scotland.gov.uk/Publications/2012/06/7452>.

A wide range of stakeholders responded to both consultations, over 100 responses were received in total. Respondents included public bodies, businesses and their industry representatives, environmental NGOs and private individuals. For the second consultation on "Scotland the Hydro Nation, Prospectus and Proposals for Legislation" 3 public meetings were held and a number of meetings arranged on request or by invitation. Given the open nature of the consultation a qualitative summary was drafted, highlighting the main comments received. There was strong support for the vision set out in the document, the importance of the water resource to Scotland's continuing prosperity, and the key proposal of developing the value of Scotland's water resources. Consultees supported the continuation of Scottish Water in the public sector. Crucially, that support was tempered with a consistent view that delivery of Scottish Water's core functions should not be compromised by new responsibilities in legislation or through the pursuit of the Hydro Nation agenda. Customers in Scotland should be protected from any financial risk and suffer no fall in quality of service as a result of the broadening agenda. The Prospectus set out that protecting core functions remains as a principle and that was clearly supported.

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

Within Government

The duty in Part 1 of the Bill lists public bodies who Scottish Ministers would be expected to work with when deciding how to make best use of Scotland's water resources. They are: Scottish Environment Protection Agency, Scottish Enterprise, Highlands and Islands Enterprise, Scottish Natural Heritage, and Scottish Water. They have been consulted during the Bill development process and suggested content for the Bill.

In addition, other policy colleagues have been asked for views and input as the Bill provisions developed, in particular:

- Transport colleagues who are responsible for Scottish Canals (formerly British Waterways Scotland).
- Civil Law colleagues (for advice on property law and legal aid).
- Environmental Quality colleagues (for advice on the water environment, priority substances, septic tanks and drought management).
- We also maintain contact with our counterparts within the UK government, in particular in Defra (in relation to water environment) and Business Innovation and Skills (in relation to the non-domestic sector, and water industry regulation).

Business

Some businesses responded to the public consultation exercises and attended workshops as well as having face to face discussions with the Bill team. This engagement with business will continue during the Bill process, particularly in relation to the proposed new consent regime for large abstractions, trade effluent consents and rights for Scottish Water to enter land and premises for the purposes of monitoring water quality. Further information is available in the Financial Memorandum for the Bill which can be viewed as part of the Bill's Explanatory Notes:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/52620.aspx>.

In particular, the Financial Memorandum sets out that for example, should the charges for trade effluent licences be subject to change by Scottish Water or SEPA, there are notice and consultation processes in place to ensure that businesses are made aware of the proposals and have the opportunity to comment. In addition there are a number of areas in the Bill where costs are not yet known, and updated Business and Regulatory Impact Assessments will be produced as data is produced by the work that is ongoing to establish the loadings of "Priority Substances" in the sewerage network.

Options

Water Resources (Scotland) Bill (Part I) – (Part 6)

The bulk of measures in the Bill are considered to build positively upon the existing situation and have been developed from in an incremental manner rather than from a wider options appraisal. In the case of the duty on Ministers and others in Part 1, this is intended to deliver greater progress against a non-legislative programme of work than a 'do nothing' option could have delivered. Where specific options have examined, these are set out below but in other cases it is considered that the published provisions are preferable to the 'do nothing' option.

With respect to trade effluent, the following options were considered:

1. extending the list of items upon which Scottish Water can set conditions in a trade effluent consent
2. reproduce the arrangements in England & Wales for 'special category effluents'
3. enable SEPA to regulate Priority Substances on trade effluent consents.

It was concluded that extending the list of items upon which Scottish Water can set conditions in a trade effluent consent was the most effective way forward. The principles are already laid down within the Sewerage (Scotland) Act 1968, the approach is consistent with the 'polluter pays' principle, it does not result in any new duties on other organisations.

With respect to powers of entry and inspection, the options considered were either to include these powers within the Bill, and to what degree of definition, or not at all. Leaving arrangements unchanged would not allow progression towards urban catchment management, so the 'do-nothing' option was rejected. Having some clearly defined powers of entry and inspection was selected as it provides the opportunity to innovate and conduct fuller risk assessments of the sources and pathways of chemicals within the sewerage network.

With respect to Fats, Oils and Grease (FOG), the current situation is that there is no specific offence relating to blockages of the sewer from FOG. Other sections of the Sewerage (Scotland) Act 1968 might allow for a prosecution, but in practice this rarely happens, so there was a case for change. Creating a specific offence of discharging FOG into the sewer will clarify this point and be protective of the sewer. Additionally, this offence will complement the work in other areas, such as Environmental Health, Building Regulations and Waste legislation – which should prevent FOG entering the sewer and causing difficulties.

Sectors and groups affected:

- Trade effluent consent holders will be affected, if their processes use any Priority Substance.
- The powers of entry and inspection could involve any (domestic, trader, commercial) premises or land. Private individuals, businesses, land and property owners and their tenants might all be affected.
- Fats Oils and Grease offence is most likely to affect commercial restaurants and fast food outlets.

Benefits

Set out below are the estimated benefits arising as a direct result of the Bill.

	Qualitative description of benefits	Quantitative assessment of benefits
Powers of Entry & Inspections – urban and raw water catchments	<p>These powers are intended to support a progressive approach to managing catchments. The benefits are:</p> <ol style="list-style-type: none"> 1.1 Risk assessments of the sources and pathways of Priority Substances can be conducted rapidly. 1.2 Action can be planned, based on the outcome of the risk assessments. 1.3 The powers save time vs contacting each owner / tenant in order to negotiate entry. 	<p>Estimated benefit of £10 million savings over 25 years for 1 large drinking water catchment</p>
Trade Effluent Consents	<p>Wide range of Priority Substances may be used by traders, with the wastewater passing to sewer and ultimately the water environment. The benefits of the proposals are:</p> <ol style="list-style-type: none"> 2.1 pollution is controlled at source by the polluter, which is consistent with Polluter Pays Principle (traders may have to install treatment / recovery technology at their sites, see below). 2.2 Containing Priority Substances within a trader's site reduces the impact that these substances may have on the water environment. 2.3 End-of-pipe treatment (at the wastewater treatment works) is avoided (these costs can be a significant burden on Scottish Water customers) 	<p>Work is at an early stage to develop data on the potential savings</p>
Fats Oils and Greases (FOG)	<p>These powers should be seen as part of a suite of legislation aimed at reducing FOG in the wastewater stream. The benefits are:</p> <ol style="list-style-type: none"> 3.1 Improved process for cases going to Procurator Fiscal for consideration. 3.2 Reduction in cost of clearing sewers of FOG. . 3.3 Ability to recover costs for 	<p>Will result in savings but it is too early to quantify these</p>

	sewer cleaning.	
Non domestic Services	<p>Powers to improve Non Domestic services</p> <p>4.1 Reduced administrative costs by elimination of enquiries on “deemed contracts” between Licensed Providers and commercial premises</p> <p>4.2 Introduction of an obligation on landlords of commercial premises to inform water services provider when occupancy changes will reduce bad debt</p>	<p>£30, 000 to £60, 000 efficiency savings per annum</p> <p>£528 K to £2.64 million per year</p>

Costs

Set out below are the estimated costs arising as a direct result of the Bill as well as expenditure being made in support of the Hydro Nation agenda.

	Expenditure being made to support delivery of the Hydro Nation agenda	Costs arising as a direct result of the Bill
Scottish Government	<p>£3m per year from 2012/13 to 2014/15 contributing to the Climate Justice Fund and Hydro Nation Forum, Innovation Park, Hydro Nation Saltire Fellowships & PhDs and other related activity to develop the value of water resources in Scotland.</p> <p>£3.2m per year developing a Water Centre of Expertise and strategic research on Water and Renewable Energy</p>	Staffing and administration costs of £115,000 per year
Local Authorities	None	No direct costs, but some possibly arising in time from Part 6 of the Bill if the Local Authority is a trade effluent discharger
Other Bodies, Individuals and Businesses		
Part 1 Development of Water Resources	None	No direct costs but designated bodies expected to align existing budgets with the Hydro Nation agenda where appropriate

Part 2 Control of Water Abstraction	None	<p>Costs of applying will be determined by the procedures set down in regulations and will be set out in a BRIA to accompany those regulations</p> <p>Costs of complying with any conditions that Ministers attach to their approval will vary on a case by case basis</p>
Part 3 Scottish Water's Functions	£44m investment over the next 3 years, primarily in renewable energy	The £44m investment will deliver the new functions imposed by this part of the Bill
Part 4 Raw Water Quality	None	<p>Scottish Water's costs for visiting a drinking water catchment, taking and analysing samples ranges from £50k-£200k annually depending on the size of the catchment</p> <p>Scottish Water has budgeted to spend £1.2m per year entering into agreements with landowners within 7 catchments in the period to 2015</p>
Part 5 Non-Domestic Services	None	Costs on landlords to notify Licensed Providers on change of occupancy estimated to total between £90k and £250k per year
Part 6 Sewerage Network	None	<p>Cost on businesses of meeting tighter trade effluent discharge consents cannot be estimated at this time and will vary depending on the substance to be treated and volumes being discharged</p> <p>Costs on Scottish Water of undertaking pro-active catchment inspection and advisory/enforcement work with discharges to the network estimated to be in the region of £1m per year</p>
Part 7 Water Shortage Orders	None	None

Water Resources(Scotland) Bill (Part 7) – Water Shortage Orders

Options

The proposals to manage temporary water shortages result from the need to modernise the existing legislative regime. The existing provisions for Drought Orders appear in the Natural Heritage (Scotland) Act 1991 and these are no longer well aligned with modern legislation for the water environment, namely the Water Environment and Water Services (Scotland) Act 2003 and the associated regulations. In summary, “do nothing” was not an option, as the existing provisions would not suffice in a drought incident.

The options that were considered were based upon taking the existing elements of the 1991 Act that remain relevant and identifying where new proposals were required.

Areas that remained largely unchanged include access to land for Scottish Water; duration of the Orders; the essential difference between the 2 levels of Order; provision of financial compensation.

Changes were required in other areas of the legislative framework for drought, in order to ensure that the overall framework was modernised and properly aligned with the water environment legislation.

Managing customer demand for water during a drought – in this area we considered 3 options:

- Taking the England and Wales approach for non-essential use
- Building upon the England & Wales approach to make it suitable for Scotland
- Do nothing

The “Do-nothing” option was rejected as having no plan in place to manage customer demand for water during a drought is no different from the current arrangements and leaves lack of clarity in a drought incident.

The England & Wales proposals present many benefits e.g. identifying non-essential uses of water for both domestic and commercial consumers. The water companies are able to advertise controls on domestic customers, with the additional step of needing a Drought Order for controls on commercial water uses. However, the close association between enforcement and introduction of controls on use was not seen as appropriate for Scotland.

We selected to build upon the approach established in England & Wales, whereby a list of measures to manage customer demand for water is identified within the legislative framework. We have separated the non legislative action that Scottish Water may take in requesting Temporary Water Saving Measures from enforcement, which will require Scottish Ministers to grant an ordinary or emergency Water Shortage Order. This separation achieves a balance between the need to actively save water (which many people are willing to contribute to based on advice and information) and powers to criminalise those that do not wish to be involved in water saving. This separation also allows actions to mitigate the effects of a water shortage to be escalated according to the severity of the situation.

- **Sectors and groups affected**

- Commercial and industrial users of water though exceptions and means of appeal for derogation apply.
- Domestic users of water

- **Benefits**

Option	Benefit
Taking the England and Wales approach for non-essential use	Clearly identified measures in legislation that will result in water saving for both domestic and commercial users of water. Water Plcs are able to make the decision to implement measures for domestic users. A widely quoted figure is that 5% savings can be achieved from domestic customers but the robustness of the evidence base underpinning this is unclear.
Building upon the England & Wales approach to make it suitable for Scotland	Clearly identified measures within the legislation that will result in water saving for both domestic and commercial users of water. De-coupled enforcement from request to save water. There is no robust evidence base to inform potential water savings but also no indication that any savings would be lower than the England & Wales approach.
Do nothing	No measures for water saving identified.

- **Costs**

Option	Costs
Taking the England and Wales approach for non-essential use	During a drought incident, certain commercial users of water will have to restrict their activities. The impact on economic activity depends upon the extent and duration of a drought. Financial costs to domestic users are not considered to be significant, although impacts on life-style and personal choice will affect individuals.
Building upon the England & Wales approach to make it suitable for Scotland	During a drought incident, certain commercial users of water will have to restrict their activities. The impact on economic activity depends upon the extent and duration of a drought. Financial costs to domestic users are not considered to be significant, although impacts on life-style and personal choice will affect individuals.
Do nothing	No measures for water saving identified. The cost of not identifying water saving measures in advance is that they are hard to introduce during a drought incident, which can result in delaying a response to a drought.

Scottish Firms Impact

Through the consultation process and direct contacts there has been liaison with a wide range of business representative organisations. This will continue during the Bill process.

Competition Assessment

It is not considered that the provisions in the Bill will have an impact on the competitiveness of Scottish companies within the UK or elsewhere in Europe. Provisions in the Bill to enable Scottish Water to enter and inspect premises will impact on farmers and landowners but, given the nature of the rights being proposed for Scottish Water, it is not considered that this impact will harm their competitiveness. This is similarly true of the provisions to require landlords to notify licensed providers where there is a change of tenancy. The impact on trade effluent discharges of meeting tighter trade effluent consents can not be estimated at this time.

Test run of business forms

The Bill includes the power for the Scottish Ministers to make by regulations provision about the procedure in relation to an application for their approval for a qualifying abstraction. Any forms that are included in such regulations will be fully considered as part of a Business Regulatory Impact Assessment that will accompany those regulations. No other new business forms will be introduced as a result of these proposals.

Legal Aid Impact Test

Whilst enforcement provisions could lead to applications for legal aid, our assessment, confirmed by the Access to Justice team is that both the likelihood and potential incidence of this would be low.

Enforcement, sanctions and monitoring

The Scottish Environment Protection Agency (SEPA) is Scotland's environmental regulator. Its main role is to protect and improve the environment by, helping business and industry to understand their environmental responsibilities, enabling customers to comply with legislation and good practice and to realise the many economic benefits of good environmental practice. SEPA also protect communities by regulating activities that can cause harmful pollution and by monitoring the quality of Scotland's air, land and water. SEPA runs a pollution hotline so that incidents can be reported and investigated.

The Bill introduces 5 new criminal offences which attract fines.

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

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

Part 6 provides that discharging fats, oils and greases (FOG) from non-domestic premises into the public sewer so as to cause, or be likely to cause, a blockage of the public sewer or to interfere with the free flow of its contents is an offence. The maximum fine is £40,000 on summary conviction (or up to 12 months imprisonment) and an unlimited fine (or up to two years imprisonment) on indictment. This provision clarifies that discharging FOG in particular is an offence under the Sewerage (Scotland) Act 1968, consequently the fines in this area are not new.

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

Implementation and delivery plan

Water Resources Bill (Part I) – Hydro Nation provisions

The Hydro Nation agenda is considered to be a long term agenda. Planning and delivery is being developed for the first 3 years of implementation and will require collaboration between Scottish Government, Highlands and Islands Enterprise, Scottish Enterprise, Scottish Environment Protection Agency, Scottish Natural Heritage, Scottish Water and other bodies public, private and from the third sector. It is expected that a programme of action be delivered across the first 3 years 2012-15 and that evaluation criteria be established during that time with a view to detailed reporting at the end of that period. Such a report might include information on water resources export levels, project reports from international development work, company case studies on innovation, details of academic research, assessments of social and environmental benefits gained.

- **Post-implementation review**

After the first 3 year period of implementation and subsequent reporting a policy review would be recommended.

Water Shortage Orders

Implementation and delivery plan

The new powers in relation to Water Shortage Orders, will be available for use in circumstances when there is an interruption to the public supply. SEPA and Scottish Water will be expected to run through the provisions as part of their planning processes for emergency situations, to ensure that tasks and responsibility are appropriately allocated between the organisations so there is no duplication of effort,

During a water shortage situation, Scottish Water would be expected to implement its planned operational procedures in discussion and coordination with SEPA. These procedures include a communication plan in order to ensure customers are made aware of the need to reduce their demand on the water network.

Scottish Ministers will be involved in this process as they would be advised of any emerging situation where water shortage was predicted. Under the new legislation, Ministers will also determine applications from Scottish Water for Ordinary or Emergency Shortage Orders, and will take advice from SEPA in this regard.

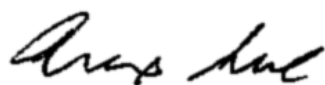
Post-implementation review

After a water shortage incident a review will take place of the event itself. This will also include the effectiveness the legislative framework and any changes that might be required.

Declaration and publication

I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

A handwritten signature in black ink, appearing to read 'Alex Neil', is centered within the signature box.

Date: 31 August 2012

Minister's name:

Alex Neil, Cabinet Secretary for Infrastructure and Capital Investment

Scottish Government Contact point:

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