

Report of the Consultation on the Draft Water Services (Scotland) Bill

Introduction

1. This paper summarises the responses to the public consultation on the provisions in the Scottish Executive's draft Water Services Bill. The consultation document, which included the text of a draft Bill, was published on 13 October 2003. The deadline for responses was 9 January 2004.

2. Over 700 copies of the consultation document were distributed to MSPs, MPs and MEPs for Scottish constituencies, local authorities, businesses, legal firms, universities, trade unions, directors of public health, tourist boards, sports, environmental, faith and diversity organisations, and political parties. The document was also published on the Scottish Executive's website.

3. The document outlined the purpose of the Bill as being to:

- protect public health and the environment by prohibiting common carriage on the public water and sewerage networks;
- safeguard the Executive's social objectives by prohibiting anyone other than Scottish Water from serving household customers;
- establish a licensing regime to regulate the provision of retail services to non-household customers.

In addition it outlined proposals relating to the Coal Authority. (Comments received about these are summarised at paragraphs 32-33).

4. 47 written responses to the consultation were received. Annex A lists those who responded. A breakdown of respondents by type of organisation is given below.

Scottish Water	1
Water Industry Commissioner	1
Local Authorities	10
Individual businesses or business representative organisations	10
Customer Consultation Panels	4
Potential switch engine suppliers	3
Legal Firms	2
Trade Unions	2
Churches	2
Community Councils	2
Potential new entrants	1
Environmental Interest Groups	1
Political Parties	1
Universities	1
Other	6

5. The written responses to the consultation document (excluding any which have been made in confidence) have been placed in the Scottish Executive library. They can be viewed on request by phoning the Scottish Executive Library Information Service on 0131 244 4552.

Summary of Responses

6. The table below summarises responses to the 7 questions posed in the document.

Question	Yes	No	No clear answer given
1. Do the provisions at sections 1 to 4 of the ... Bill achieve the objective of prohibiting common carriage ?	18	2	27
2. Do the provisions at sections 1(3), 3 (3), 5 and 6 of the ... Bill achieve the objective of prohibiting retail competition for households ?	18	2	27
3. Do the provisions at sections 5, 7-13, 15 and the schedule of the ... Bill provide a reasonable basis for establishing and administering the proposed licensing regime ?	14	6	27
4. Do the provisions at section 14 of the ... Bill achieve the objective of ensuring that retailers contribute towards SW's wholesale costs on a consistent and proportionate basis?	8	6	33
5. Should the Bill include provisions for transitional thresholds , and if so how should they be set?	13	10	24
6. Is it satisfactory to rely on non-statutory arrangements for transferring information about retail customers?	6	13	28
7. Will the requirement on Scottish Water to establish a retail subsidiary meet the objective that all retailers, including Scottish Water's retail arm, are treated equally for the purposes of the licensing regime?	13	9	25

7. The high number of "Not Clear" answers reflects some respondents wishing only to answer one or two questions. Others did not address the questions directly, but rather made general comments about the Bill or a particular aspect of it. The responses are being taken into account by the Executive as it prepares the Bill for introduction in the Parliament. To make the analysis in the paper more meaningful, percentages in the remainder of the paper refer only to those respondents who expressed a clear opinion about a particular topic.

Overview

8. Taken as a whole, the responses were supportive of both the prohibition on common carriage on the public networks, and the prohibition on retail competition in the domestic sector. The proposed licensing regime to regulate retail competition in the non-domestic sector received a more mixed response, both with respect to the value of the scheme itself, and the approach taken to its operation.

9. The detailed analysis of each question below reflects the range of responses to these issues in more depth.

Detailed analysis

Question 1: Do the provisions at sections 1 to 4 of the draft Water Services (Scotland) Bill achieve the objective of prohibiting common carriage?

10. Only the Community Councils felt that the provisions were not clear enough to prohibit common carriage. All others who directly answered the question thought the provisions would fulfil their stated aim.

11. Most respondents were in favour of the prohibition. A minority, particularly in the business sector, thought that common carriage should be allowed, or that the need for the prohibition should be reassessed in a few years' time. Some respondents considered that there was not enough evidence to support the assertion that common carriage would pose a risk to public health or the environment.

Question 2: Do the provisions at sections 1(3), 3 (3), 5 and 6 of the draft Water Service (Scotland) Bill achieve the objective of prohibiting retail competition for households?

12. The balance of responses to this question matched almost exactly that of those received to Question 1. The prohibition was generally welcomed by most groups of respondents. This was on the basis that it is desirable to retain the system of cross subsidies provided by the present local authority administered billing and collection arrangements and that opening up the household sector to retail competition would be more risky than doing so in the business sector. However, business sector respondents tended to think that households should have the opportunity to benefit from competition, if not now then at some point in the future. They also highlighted that certain businesses which are in some sense residential e.g. hospitals, care homes, private health facilities, should be allowed to benefit from retail competition from the outset.

Question 3: Do the provisions at sections 5, 7-13, 15 and the schedule of the draft Water Services (Scotland) Bill provide a reasonable basis for establishing and administering the proposed licensing regime?

13. 70% of those who expressed a clear opinion on this question felt that the provisions did provide a reasonable basis for the licensing regime. Many of the Councils felt that they should be notified of any intention to disconnect a water supply in their respective areas, given the public health implications of such action and the possible impact that it could have for the Council's public health responsibilities.

14. Some respondents (Unions, Scottish Socialist Party) were not in favour of retail competition in any form, and therefore were not happy with the proposed licensing arrangements.

15. Various respondents, including Councils, Unions, churches, and customer panels had concerns over the extension of the powers of the WIC, and felt that the provisions gave too much power to one person. A significant number within this group suggested that these concerns could be addressed by re-structuring the WIC as a Board.

16. The responses from legal firms argued that the licensing regime did not do enough to ensure that Scottish Water would help to foster retail competition, and suggested that the regime was too protective of Scottish Water's monopoly. While businesses generally

supported the licensing proposals, a number of business sector respondents were concerned that the regime would not do enough to combat Scottish Water's perceived inefficiency.

17. Some businesses were concerned about the effect of the regime on current agreements between Scottish Water and business customers, and suggested that such customers should have the option of retaining the benefits of current agreements with Scottish Water for the remainder of contractual period.

18. Many respondents, including those who did not answer the question directly, expressed concern that new entrants to the market would be able to "cherry pick" attractive customers, leaving Scottish Water with customers thought to be less profitable or more difficult to serve. Concern was expressed too about the potential adverse effect that retail competition would have on Scottish Water's income and therefore on charges for domestic customers.

Question 4: Do the provisions at section 14 of the draft Water Service (Scotland) Bill achieve the objective of ensuring that retailers contribute towards Scottish Water's wholesale costs on a consistent and proportionate basis?

19. This question received the lowest number of direct answers, with a number of respondents commenting that they were not qualified to answer the question. Of those who expressed a clear view, 57% said that the provisions would ensure that retailers contributed fairly to Scottish Water's wholesale costs, and 43 % disagreed.

20. Business respondents tended to the view that the provisions would be effective in principle, but some had concerns about Scottish Water's provision of accurate data regarding the costs of supplying wholesale water. They argued that Scottish Water's role and responsibilities in this area needed to be clarified and to be discharged in a properly transparent manner. A number of business and legal respondents said the arrangements were not acceptable as they did not provide a sufficiently independent means by which licensed retailers could satisfy themselves that wholesale charges were reasonable.

21. Scottish Water expressed strong concern that the arrangements should be robust enough to ensure that the costs recovered from retailers would enable it to fund fully all its core functions, including statutory functions related to setting up and operation of the retail market.

Questions 5: Should the Bill include provisions for transitional thresholds, and if so how should they be set?

22. This question received the largest number of direct answers. Respondents were split as to whether the introduction of thresholds was desirable, with 57% in favour and 43% against.

23. Respondents who were against thresholds tended to the view in the consultation document that thresholds were unnecessary in a retail only market; or they suggested that the use of thresholds would stifle the market rather than encouraging it to develop. Some respondents stated that not having thresholds would make the market more attractive to potential new entrants.

24. Those in favour of thresholds cited the desirability of the market developing in an orderly manner. They were concerned too that the absence of thresholds would enable new entrants to “cherry pick” attractive customers and could potentially place a heavy administrative workload on Scottish Water. The Water Industry Commissioner said that, one of the reasons for opening the market gradually might be to aid understanding of how competition would develop in the market as a whole. He argued however that restricting the size of the initial market through use of thresholds would not assist this process, as a segment defined by a relatively high threshold would be too small to be representative and would not indicate how the whole market would operate.

25. Very few respondents proposed ideas on how thresholds, or alternatives to thresholds, should be set, and those that did mainly suggested adopting the same threshold as England and Wales i.e. 50 megalitres. However, one respondent (a potential provider of switching services, with experience of the introduction of competition) suggested using the strategy employed by the UK electricity market which restricted the number of transfers per day and limited by postcode, the parts of the country to be opened to competition. This, it was claimed, would limit the load on new systems and procedures. The same respondent also cited the example of the UK gas market, which was initially limited on a geographical basis.

Question 6: Is it satisfactory to rely on non-statutory arrangements for transferring information about retail customers?

26. Of those respondents who expressed a clear opinion, only 32% thought that it was satisfactory to rely on non-statutory arrangements for transferring this information. Among the other 68% of respondents who answered the question directly, there was general agreement that the arrangements for transferring information about customers was an essential aspect of the new market, and that it was not sufficient to let the participants “sort it out among themselves”. This opinion was partly based on the experience of the energy markets.

27. Most of those who supported statutory arrangements suggested that the Water Industry Commissioner should be given responsibility for establishing and administering these. However Scottish Water suggested that it should be given the statutory duty to provide and manage a switching engine for customer data.

28. Apart from the need to avoid confusion, other reasons for giving the Water Industry Commissioner a statutory role included the desirability of ensuring that Scottish Water would provide retailers with accurate information quickly.

29. Three respondents, with experience of implementing competition arrangements in the energy markets, focussed their responses specifically on this question. They all argued that robust and effective procedures in this area were important. Each considered that there should be a strong role for the Water Industry Commissioner, whether or not it had a statutory element, partly to ensure that Scottish Water did not unfairly benefit from its advantage of initially holding all the information about customers. These respondents highlighted the need for: consistency in quality of information transferred; commonly applied protocols for exchanging information; a legal registration agreement to be signed by all participants; clear rules on the timing of when customers could switch suppliers; effective customer interfaces; rules for obtaining and transferring meter readings. They argued that many of these could be covered in the conditions of the licence.

Question 7: Will the requirement on Scottish Water to establish a retail subsidiary meet the objective that all retailers, including Scottish Water’s retail arm, are treated equally for the purposes of the licensing regime?

30. Of the respondents who expressed a clear view on this question, 59% thought that the requirement on SW to establish a retail subsidiary would ensure that all retailers were treated equally. Most respondents agreed with the principle of separation, but qualified their response by saying that it must be a genuine separation of the two businesses, including complete separation of accounts. Some respondents emphasised that particular duties and obligations (including confidentiality) would need to be imposed on Scottish Water, while others felt that it would be too difficult to completely separate the two sides of the business and that Scottish Water Retail would always retain an advantage over other retailers (e.g. through its access to cheaper finance than competitors by virtue of being part of a body that borrows from Scottish Ministers). Many respondents mentioned the benefits to the efficient management of Scottish Water as whole of the greater transparency that would result from Scottish Water being required to account separately for its various costs.

31. The Trade Unions felt that separation would be an unwelcome disruption for Scottish Water, when what was really required was a period of stability to focus on improving the physical networks.

Provisions relating to the Coal Authority.

32. The proposal in section F of the consultation document, to bring in legislation to prevent environmental damage from abandoned coal mines, is based on the powers that have been enacted for England and Wales in the Water Act 2003. It will enable the Coal Authority to take specific actions (access and compulsory purchase powers) where a discharge has caused, is causing or is likely to cause serious pollution of the environment or danger to life or health.

33. There were 3 comments on these proposals:

- To avoid confusion, Crown Estate Solicitors (Scotland) want the provisions in Bill to make clear that all Crown land would be excluded from the proposed compulsory purchase powers.
- Fife Council has welcomed the proposals. It suggested that the Coal Authority's responsibility for drainage from mines, day levels (a pipe line that drains mine water into a local water course), and other necessary concomitants of mine workings should be made clear in the legislation. They would like this to include remediation of water quality as well as prevention of flooding and other deleterious effects on neighbouring land.
- Argyll and Clyde National Health Board welcomed the proposals, considering them to protect public health adequately.

Annex A

Respondents to the Consultation on the Draft Water Services (Scotland) Bill

Scottish Water (1)
Water Industry Commissioner (1)

Councils (10)
Aberdeen City Council
Argyll and Bute Council
Dundee City Council
East Ayrshire Council
East Dunbartonshire Council
Fife Council
North Ayrshire Council
North Lanarkshire Council
Renfrewshire Council
South Lanarkshire Council
Individual businesses or business representative organisations (10)
BP Grangemouth
British Waterways
CBI
Ciba Speciality Chemicals
Energy Information Centre
Federation of Small Businesses
Royal Institution of Chartered Surveyors
Scottish Chambers of Commerce
Scottish Council for Development and Industry
Scottish Enterprise
Customer Consultation Panels (4)
North East Scotland Consultation Panel
North West Scotland Consultation Panel
South East Scotland Consultation Panel
South West Scotland Consultation Panel
Potential Switch Engine Suppliers (3)
Electra Link
Gemserv
LogicaCMG
Legal Firms (2)
British Water
Burness
Trade Unions (2)
Scottish Trades Union Congress
UNISON
Churches (2)
Scottish Churches Committee
Scottish Churches Industrial Mission

Community Councils (2)
Association of Scottish Community Councils
Tillicoultry Community Council
Potential New Entrants (1)
Aquavitae
Environmental Interest Groups (1)
Scottish Natural Heritage
Political Parties (1)
Scottish Socialist Party
Universities (1)
Napier University
Other (6)
Alistair Lings (Personal)
Argyll and Clyde NHS Board
Badenoch Land Management
Chartered Institute of Water and Environmental Management
Crown Estate Commissioners
Scottish Consumer Council