



Scottish Executive Environment Group

**Connecting to the System – Consultation
on Paying for Connections to the Water
and Sewerage Networks**

Consultation Report

March 2006
Paper 2006/4

FURTHER INFORMATION

This report has been published on the Scottish Executive website, and a link to it can be found at:

www.scotland.gov.uk/Topics/Environment/Water/17583/10148

Additional copies may also be obtained from:

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Individual responses

Copies of individual responses (other than those where confidentiality was requested) have been published on the Scottish Executive's website at:

www.scotland.gov.uk/Publications/2005/12/15102415/24159

They are also available in the Scottish Executive Library, K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD. You can make an appointment to view responses at the library, or request that copies be sent to you by post, by contacting the library on 0131 244 4552 or library@scotland.gsi.gov.uk. Copies that are made for you, or photocopying when at the library, will be charged on a cost-recovery basis.

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1. INTRODUCTION

1.1 In August 2005, the Executive published a consultation paper, *Connecting to the System: Consultation on Paying for Connections to the Water and Sewerage Networks*, which sought views on proposals and draft Regulations to alter the way that Scottish Water contributes to the costs of new connections to the public water and sewerage networks. The Provision of Water and Sewerage Services (Reasonable Cost) (Scotland) Regulations 2006 will introduce a statutory method for calculating Scottish Water's contribution towards new connections, clarifying how the costs of new connections should be divided between developers and Scottish Water.

1.2 This paper reports on that consultation, explains what policy decisions Ministers have taken in finalising the Regulations, and sets out how Ministers intend to take forward other policy issues that arose through the consultation.

2. BACKGROUND

2.1 The powers to make the Provision of Water and Sewerage Services (Reasonable Cost) (Scotland) Regulations 2006 are contained in the Sewerage (Scotland) Act 1968 and Water (Scotland) Act 1980, as amended by the Water Environment and Water Services (Scotland) Act 2003. The Regulations were laid before Parliament on 9 March 2006 and are intended to come into force on 1 April 2006.

2.2 The consultation paper *Connecting to the System: Consultation on Paying for Connections to the Water and Sewerage Networks* was published on 25 August 2005, and remains available on the Scottish Executive's website at:
<http://www.scotland.gov.uk/Publications/2005/08/23140228/02289>.

2.3 More than 450 copies of the consultation paper were issued directly to interested parties. These included representatives from the water industry, housing developers, MSPs, Scottish MPs and MEPs, local authorities, industry and development bodies, housing association representatives, professional institutions and enterprise interests. A more detailed summary of those to whom the consultation was sent is set out in Annex A. The consultation paper was published on the Scottish Executive's website and made available through Blackwell's Bookshop, Edinburgh. It was also publicised through a press notice.

2.4 The consultation period ran from 25 August to 17 November 2005, and responses that had arrived by 25 November 2005 were accepted and included in this analysis. A total of 48 responses were received and these have now been published, unless confidentiality was requested, on the Scottish Executive website at:
www.scotland.gov.uk/Publications/2005/12/15102415/24159.

2.5 A list of these respondees is included in Annex B, which demonstrates that responses were received from a cross section of interested parties. The Scottish Executive would like to thank all those who took the time to consider the consultation paper and submit their responses.

3. SUMMARY OF RESPONSES

3.1 The consultation responses indicated general support for the proposals in the consultation paper, and in particular for Ministers' change in policy to require Scottish Water to contribute towards costs arising in 'Part 2' and 'Part 3' infrastructure¹ rather than just 'Part 3' infrastructure. Ministers have now confirmed this policy in the Regulations laid before Parliament. Other key comments from consultees included:

- Requests for Scottish Water to make a greater contribution towards significant infrastructure requirements, either by funding 'Part 3' directly in some or all cases, or by widening the definition of 'Part 4' infrastructure (which Ministers have required Scottish Water to fund) to include types of infrastructure currently considered to be 'Part 3';
- Support for the Regulations to cover both domestic and non-domestic connections to the public network, but no clear recommendations for a basis for calculating Scottish Water's contributions to non-domestic connections;
- Agreement from the majority of respondents that Scottish Water's contributions should be limited to an amount based on future income from the connection, although a minority of respondents raised concerns about connections in particular circumstances, for example, smaller developments, developments in rural areas and affordable housing;
- Agreement from the majority of respondents that connections to existing properties should be treated in the same way as connections to new properties;
- Concerns regarding developments constraints, including doubts that Scottish Water would deliver Ministers' objective to fund all anticipated strategic infrastructure for the period 2006-14; calls for 'Part 3' infrastructure to be funded by Scottish Water in some or all situations; and concerns regarding Scottish Water's co-ordination and communication of work to address development constraints; and
- Support for the ability to reserve capacity for a range of periods, mainly from 3 to 10 years and in line with the planning system.

3.2 These issues are considered in more detail in the next section.

¹ Scottish Water's infrastructure (all of the water or sewerage pipes, works or other equipment for the collection, treatment and movement of water and wastewater) is sometimes divided into four 'parts' for ease of reference. A description and diagram of these can be found in paragraphs 2.7 and 2.8 of the consultation paper: <http://www.scotland.gov.uk/Publications/2005/08/23140228/02305#2>

4. ANALYSIS OF CONSULTATION RESPONSES & RECOMMENDATIONS

4.1 This section provides a more detailed analysis of the responses to the questions posed in the consultation paper, and sets out, where appropriate, Ministers' response or decisions following the consultation.

Infrastructure eligible for a contribution

4.2 The consultation paper proposed that Scottish Water's contributions towards new connections should be available for expenditure on what was termed the local infrastructure ('Part 2' and 'Part 3' infrastructure) required to make a new water or sewerage connection. This went further than Ministers had gone in their Statement on the water industry in February 2005, where they had proposed that contributions would be available towards 'Part 3' but not 'Part 2' costs. The consultation paper explained that Ministers had subsequently concluded that a broader approach would treat new connections more equitably, allowing the maximum contribution to be available across a greater range of infrastructure. It also noted that this approach would be consistent with similar policies in England and Wales, providing a level playing field for developers who operate across the UK.

Question 1: Do you agree that Scottish Water's contribution should be targeted at all local infrastructure ('Part 2' and 'Part 3'), with developers funding immediate connections and Scottish Water funding strategic capacity?

If not, what approach would you support, and why?

Agree	35	73%
Disagree	9	19%
No comment/no strong view	9	19% ²

4.3 Respondents strongly agreed with this proposal, emphasising that it was reasonable that contributions should be available towards 'Part 2' infrastructure and that it would be difficult or inequitable to distinguish between 'Part 2' and 'Part 3' costs. As might have been expected, this support was particularly clear from developers, who would directly benefit from it. Concerns were raised by a minority of respondents, including the Water Customer Consultation Panels, that increased reasonable cost contributions would increase the burden on Scottish Water's existing customers. However, a more widely expressed view was that additional contributions should be made by Scottish Water, with some respondents considering that Scottish Water should either make a greater contribution towards 'Part 3' infrastructure, meet all 'Part 3' costs or that some 'Part 3' infrastructure, particularly trunk sewers, should be redefined as strategic, 'Part 4' infrastructure.

4.4 Other issues raised by respondents included:

- concern that some developments required or merited additional support, whether due to their rural location, their social benefit or previous under-investment in water and sewerage infrastructure;
- doubt as to Scottish Water's ability to deliver investment in strategic infrastructure and capital maintenance; and

² The percentages given in this report have been rounded to the nearest whole number and therefore do not always add up to exactly 100%.

- concern that the proposals did not take sufficient account of environmental considerations.

Response

4.5 After considering these responses to the consultation, Ministers have confirmed that reasonable cost contributions will be available towards costs incurred in ‘Part 2’ and ‘Part 3’ infrastructure, and on the same basis for all developers. They gave careful consideration to the requests that Scottish Water should be required to fund a greater proportion of infrastructure. However, to do so would require a significant change to the objectives Ministers have set for Scottish Water as part of the Strategic Review of Water Charges 2006-2010. These objectives sought to balance public and private interests in network development, and were the outcome of significant consultation and independent research. They are also the basis upon which the Water Industry Commission has made its final determination of Scottish Water’s charges for the period 2006-2010, and could not be revised without increasing customer charges or reducing funding for other aspects of Scottish Water’s investment programme.

4.6 Ministers’ proposals already increase Scottish Water’s maximum contribution, from £500 to more than £1200 for water connections and from £1000 to more than £1400 for sewerage connections. These increases, coupled with contributions being available for ‘Part 2’ and ‘Part 3’ infrastructure, can be expected to be of most benefit to developers with higher unit costs or developing smaller sites. Ministers recognise the need to support developers of affordable housing, and have responded to it by transferring £14 million per annum to the Communities Scotland budget specifically to assist in meeting water and sewerage connection costs faced by housing associations. However, Ministers concluded that it would not be reasonable to ask Scottish Water customers to provide any further assistance to developers given the other substantial costs they are required to bear.

Non-domestic properties

4.7 The consultation paper explained that Scottish Water has similar duties to provide water and sewerage connections to non-domestic properties as it does for domestic properties, although the draft Regulations only covered domestic properties. It sought views on whether the Regulations should also calculate Scottish Water’s contribution towards connections for non-domestic properties. The consultation went on to seek suggestions for a method to calculate Scottish Water’s contribution to non-domestic properties.

Question 2: Should the Regulations define Scottish Water’s contribution towards:

- (a) domestic properties only, or*
- (b) domestic and non-domestic properties?*

Domestic properties only	6	13%
Domestic and non-domestic properties	30	63%
No preference	12	25%

4.8 A clear majority of respondents considered that the Regulations should cover both domestic and non-domestic properties, with a small number of respondents considering that the Regulations should only cover domestic properties, and a quarter of respondents not expressing a preference.

4.9 It is clear that those who supported joint Regulations to cover connections to both domestic and non-domestic properties did so for two main reasons:

- to provide clarity, certainty and/or transparency; and
- to ensure that Scottish Water made an appropriate contribution towards these types of connections.

4.10 The minority of respondents who considered the Regulations should only cover domestic properties highlighted the wide variety of non-domestic development, and the difficulty of devising a calculation that could take this variety into account. The latter issue was addressed in the following question.

Question 3: If the Regulations were to define reasonable cost for non-domestic properties, what method do you suggest should be used?

4.11 Two-thirds of respondents (32) made some comment on this issue and although these provided a variety of suggestions and general views, they offered little clear view as to a calculation method. Two approaches appeared to have broad support: firstly, an approach based on average costs, along the lines described in the consultation paper, which might mean using an average non-domestic income to calculate a contribution for the majority of non-domestic properties, say those with a standard 20 mm connection, probably leading to a contribution on a similar scale to the proposed domestic contributions. Other cases with much larger usage would be dealt with on an individual basis. The second approach to be supported by a significant number of respondents was for a more complicated calculation based on actual usage (including an estimate of wastewater returned to the network). Other respondents sought specific measures to promote water efficiency and conservation measures. There was little support for Scottish Water's current system of calculating contributions based on the surface area of a development.

Response

4.12 Ministers have considered the consultation responses carefully, and officials have discussed the issue with Scottish Water and the Water Industry Commission. The key difficulty is in identifying a standard formula that would be fair to both developers and Scottish Water, given the wide variety of types of non-domestic properties and water usage (for example, a warehouse compared to a hospital) and the lower certainty compared to domestic properties as to the income that these will provide (speculative business sites can have water and sewerage services put in considerably in advance of the final occupier being known, and non-domestic properties have a less certain long term occupancy). Despite the support for covering non-domestic connections in the Regulations, neither the consultation responses nor discussions with Scottish Water and the Water Industry Commission have identified a method that is clearly suitable for legislation, or that could be developed and tested to the stage that would be required to include them in the Regulations that come into effect on 1 April.

4.13 Taking into account the main benefits that consultation respondents felt Regulations for non-domestic connections would offer, Ministers have concluded that the best approach at this point is for Scottish Water and the Water Industry Commission to develop and define a non-statutory method for calculating Scottish Water's contributions to non-domestic connections. This should deliver in large measure the clarity and certainty that respondents sought, and can be put in place by April. Ministers would then review how that operated in practice and whether it provided a basis for making Regulations in future. Such an approach

would not alter the statutory duties on Scottish Water in relation to non-domestic connections, nor the rights to refer questions regarding reasonable cost for such connections to the Water Industry Commission.

Basis for Scottish Water's contribution

4.14 The consultation paper went on to discuss the principle, and then the detail, of Ministers' proposals to calculate Scottish Water's contribution towards new water and sewerage connections to domestic properties. It explained that the calculation was intended to be fair both to Scottish Water's new customers, who will contribute to the networks in the future, and to Scottish Water's existing customers. The consultation paper suggested that these interests should be balanced by requiring Scottish Water to make a contribution equal to an estimate of the net future income that a new connection would provide to Scottish Water.

Question 4: Do you agree that Scottish Water's contribution should be limited to an amount based on future income from that connection and payable only when a development is well advanced?

If not, what approach would you support, and why?

Agree	27	56%
Disagree	13	27%
No comment/no strong view	8	17%

4.15 The majority of respondents (56%) agreed to this proposal, with some of those who commented further noting that it offered a reasonable way forward, was fair to Scottish Water's existing customers, and that it protected customers from funding speculative development.

4.16 Those who disagreed broadly wanted to see additional contributions from Scottish Water in particular circumstances. These included cases where respondents considered that there had been previous under-investment in infrastructure, where developments were in rural areas, or where development constraints existed. A few concerns were raised that cash flow problems would arise from Scottish Water's contributions only being made when a development was well advanced, and there were also concerns that basing Scottish Water's contribution on future income did not encourage water conservation, or recognise benefits where developers provided extra capacity.

Response

4.17 Ministers have confirmed that Scottish Water's reasonable cost contributions should be based on future income from the connection. The majority of consultation responses supported this approach, which balances the interests of developers and Scottish Water's existing customers. This approach recognises that many of the costs in the water industry are fixed, which means there is a real benefit in new customers sharing these costs, and that there is a public good in extending the public water and sewerage networks. However, at the same time that existing customers are being asked to fund a very substantial investment programme, it is right to limit their contribution towards the local infrastructure costs of new connections, and not ask them to bear additional development costs.

4.18 Ministers have also confirmed that Scottish Water should make their contribution when a development is well advanced. This matches Scottish Water's current policy and is necessary to protect existing customers' interests. For a variety of reasons, both planned and unplanned, developments can take a number of years to complete, and some that are started will never be completed. It is not appropriate for Scottish Water to risk customers' money by investing in developments before it is clear that they will be occupied and contribute to Scottish Water's revenue.

4.19 Ministers appreciate the importance of promoting water conservation, and the need to avoid any contrary incentive to increase water consumption has been borne in mind in preparing the Regulations, for example, in the decision to base contributions for all domestic connections on average income. Ministers also expect the proposals that Scottish Water and the Water Industry Commission develop for non-domestic connections to be consistent with the aims of sustainable development.

Detailed calculation of Scottish Water's contribution

4.20 The next part of the consultation paper explained and justified a detailed formula for calculating Scottish Water's contributions towards new connections. Views were sought on the following two questions.

Question 5: Do you have any comments on the proposed basis for calculating Scottish Water's reasonable cost contribution?

Question 6: What factors should be taken into account in setting the variables n and c , and why?

4.21 Around two-thirds of respondents commented on these questions, and generally supported the consultation proposals, with most interest in the likely result of the calculation, rather than its detail. The majority of respondents seemed to welcome a calculation that resulted in increased contributions from Scottish Water, although some sought further increases either generally or in some circumstances. The Water Customer Consultation Panels and Scottish Water raised concern at the level of contribution and increased burden it would place on customers.

4.22 Some respondents considered that the formula was too complex. Ministers are sympathetic to that view, and decisions on the value of variables " n " and " c " reduce the complexity slightly. However, a degree of complexity is necessary to make a calculation that takes account of the charge income customers will pay and the cost to Scottish Water of making a contribution in advance of receiving that income. No new connectee or developer will be required to use the formula: Scottish Water and the Water Industry Commission will use it to calculate the contribution for water and sewerage connections in any given year and the result will be publicised by Scottish Water. On the other hand, some respondents criticised approximations in the formula which reduce its complexity, for example, by allocating the entire charge income over 12 years rather than half the charge income over 25 years.

4.23 A few respondents commented on the proposal in the consultation paper to use the average of the Band B and Band C water and sewerage charges in the calculation. Some respondents agreed that was appropriate in providing an equal contribution to small or large

housing units, while others were concerned that it did not properly reflect the average band of housing unit currently being built, particularly in rural areas.

4.24 The consultation paper explained assumptions that are made in England and Wales regarding the life of an asset, and the proportion of charges spent on ongoing operating costs, and suggested that if these were transferred to Scotland it would mean allocating 12 years income to a new connection, the variable “n” in the formula consulted on. A wide range of comments were received on this issue, with some respondents considering this proposal reasonable and others suggesting shorter or, in some cases, much longer periods. There were also requests for further research into this figure. Several respondents emphasised that different assets would have different lifespans, and some concern regarding the complexity of the formula was based on the misunderstanding that “n” would vary with the type of infrastructure involved. That is not the case – it is proposed that a single, average, estimated lifespan should be used for all connections, irrespective of the particular new infrastructure involved.

4.25 Respondents also commented on the value of “c”, the real cost of capital to Scottish Water (the cost to Scottish Water of investing in connections ahead of receiving an income from them). The main concern raised by respondents regarded flexibility in this variable, and that the Regulations should be able to vary as frequently as the appropriate rate varied. This is Ministers’ intention. However, it is less likely to vary than respondents suggested, given that “c” is not meant to match, for example, the Bank of England base rate. It is the cost of capital which the Water Industry Commission has set in its determination of Scottish Water’s charges. This would only vary within a charge determination period if the Water Industry Commission made an interim determination, which is unlikely to occur frequently. Otherwise the Water Industry Commission would take into account small variations when making its next determination of charges.

4.26 Some consultees questioned the use in the worked example of the end of the suggested range for “c” which gave the lowest contribution (this was based on the value set in the Water Industry Commissioner’s draft determination of charges). Other respondents wanted to use this variable to direct more assistance at particular developments, for example in rural areas. This would mean Scottish Water’s existing customers bearing greater costs for these customers than other new customers.

Response

4.27 Ministers have confirmed that the reasonable cost calculation should be based on the formula set out for consultation. They have concluded that income should be allowed for 12 years (“n”). This matches the assumptions that are made in England and Wales, and will be reviewed if evidence is found to suggest that either the average time for which new water and sewerage infrastructure is maintenance free, for example due to technological improvements, or the proportion of Scottish Water’s income which is spent on ongoing operational costs, has significantly altered.

4.28 Ministers have taken advice from the Water Industry Commission in its final determination of Scottish Water’s charges for 2006-10. That determination was made in November 2005, and it provided that the discount rate for calculating Scottish Water’s

reasonable cost contribution should be 3.75%³, based on the published Ofwat rate of 6.25% at the time of the determination minus 2.5% to take account of inflation. This is within the range consulted upon, and will result in a slight increase in the contributions to water and sewerage connections compared to those set out in the worked examples provided in the consultation paper. As set out above, the Water Industry Commission does not expect to vary this value frequently and if it does, the Regulations will be amended to reflect the change.

4.29 Although complex, there are few variables in the formula, only one of which (average charges) will vary without the Regulations being amended. This means that as soon as Scottish Water's charges are set for any year, two simple calculations will give the maximum contributions for water and sewerage connections and these figures will be published in Scottish Water's scheme of charges. For 2006-07, the Regulations will provide for maximum contributions of around £1300 per dwelling connected to the water network and around £1500 per dwelling connected to the sewerage network.

First time connections

4.30 The term "first time connections" is used to refer to connections for existing properties, previously served by private water supplies or private sewage treatment, to Scottish Water's networks. These are also covered by Scottish Water's duty to connect at reasonable cost. The consultation paper sought views on how to treat these connections. It proposed that it would be fair to treat connections to existing properties in the same way as connections to new properties, given that Scottish Water would receive the same income from these as it would from any other new connection. The consultation paper noted that historically Scottish Water and its predecessors had sometimes treated these connections differently, although currently a difference only applied to sewerage first time connections. For these, Scottish Water made an increased contribution of between £2,000 and £6,000, depending on the council tax band of the property.

Question 7: Do you agree that connections for new properties and existing properties should be treated equally?

If not, what approach would you support, and why?

Agree	30	63%
Disagree	9	19%
No comment/no strong view	9	19%

4.31 The majority of respondents agreed that connections to new and existing properties should be treated equally, including most of the local authorities that responded (14 out of 19 local authority respondents). They agreed that this was fair, and that these connections should not receive an additional subsidy from Scottish Water customers. Only 9 respondents (19%) disagreed with the proposal, with the same number having no strong view or offering no comment on the issue.

4.32 The majority of those opposing this proposal were concerned that it did not offer those on a private sewerage system or water supply sufficient incentive to connect to the

³ Water Industry Commission for Scotland (2005) *The Strategic Review of Charges 2006-10: The Final Determination*, November 2005 (Chapter 20, page 256), which is available at: http://www.watercommission.co.uk/SRC_2006-2010/Default.asp

public system, and felt that it would discourage connection to Scottish Water's networks despite the public health or environmental benefits of such connections. Respondents were particularly concerned about water connections, however, Scottish Water currently treats first time water connections in the same way as any other new water connection. The Regulations will therefore increase the contributions to these, alongside other water connections, from £500 to more than £1300. Respondents noted that the forthcoming Private Water Supply Grant Scheme would offer additional support for existing properties connecting to the public water supply and emphasised that every effort should be made to bring the Grant Scheme into force. The Scottish Executive can confirm that the Private Water Supplies Grant Regulations are expected to be made later in 2006.

4.33 A frequent comment, made equally by those who agreed and disagreed with the proposals to treat new and existing connections, was to support additional assistance in rural areas where costs to connect to the public system are higher and where the majority of properties on private water supplies or treatment facilities are located. The case for specific support of this type was considered as part of the *Investing in Water Services* and *Paying for Water Services* consultations and customer research during 2004, which led to Ministers' investment objectives for Scottish Water for the period 2006-2014. These included some provision for first time sewerage connections, as part of Scottish Water's environmental programme, but made no equivalent provision for first time water connections. However, the Private Water Supplies Grant Scheme is likely to offer additional assistance to those who have a good reason to move to the public water supply.

Response

4.34 Ministers have concluded that the Regulations should treat connections for existing properties on the same basis as connections for new properties. They fully support the public water and sewerage networks in Scotland and agree that, where practicable, a connection to Scottish Water is usually the best option for these services. However, as the majority of respondents to this consultation and the consultations on *Investing in Water Services* and *Paying for Water Services* agreed, there are limits to the support that Scottish Water's existing customers can provide for these connections alongside the other, substantial investment that customers are funding. Where a sewerage connection to the public networks is an environmental priority identified by SEPA, it will have been funded through Scottish Water's investment programme. And where a private water supply is unsatisfactory, a grant to assist further with connection costs will be available shortly.

Development constraints and reserving capacity

4.35 The final section of the consultation paper provided an opportunity to explore issues relating to development constraints and reserving capacity which, although outwith the scope of the Regulations, are sufficiently closely linked to be of relevance. There is said to be a 'development constraint' where a lack of capacity in water or sewerage infrastructure prevents or delays new connections. For the investment period 2006-14, Scottish Water has been required to meet the strategic capacity ('Part 4') requirements of all anticipated new development. 'Reserving capacity' is where private developers invest in infrastructure or capacity that they cannot immediately use and instead reserve it for their own future use. The paper posed two general questions to seek respondents' views on these issues.

Question 8: Do you have any comments on the implications of the draft Regulations on development constraints?

4.36 This question was addressed by the majority of respondents, with the following broad issues arising:

- **Ministers' objective regarding strategic capacity**, where concern was raised as to Scottish Water's ability to achieve the objective; how Scottish Water would prioritise its investment and whether it would include appropriate growth assumptions; whether Scottish Water had sufficient knowledge of its assets; and whether Scottish Water would have sufficient resources to carry out this work;
- **concerns about significant constraints in 'Part 3' infrastructure**, and requests for public sector funding towards these, particularly where the infrastructure concerned was very costly; in rural areas where there were high unit costs; or where there was considered to have been past under-investment; and
- **process and information concerns**, and requests that Scottish Water provide better information on specific development constraints and clearer guidance on connections and resolving constraints, as well as taking responsibility for co-ordinating work to relieve these and working closely with local authorities.

Response

4.37 Ministers are well aware of the problems that development constraints have given rise to in various parts of the country and take a close interest in ensuring that these are resolved. The Scottish Executive has been closely involved in discussions with developers, Scottish Water, local authorities and other interested parties on these issues and there are a number of actions that have been taken or processes that are underway to reduce constraints and address the specific issues raised by consultation respondents.

4.38 Scottish Water and the Scottish Environment Protection Agency (SEPA) have developed a Memorandum of Understanding on the Impact of Proposed Development on the Public System. This was signed in November 2005, and is being rolled out across Scotland, assessing what constraints there are in different parts of the network. The results from this are still emerging but already capacity for significant numbers of additional housing units has been identified across locations that were previously constrained. The results of this will contribute to Scottish Water's first annual report on strategic capacity, which Ministers have required to be prepared by 1 April 2006. The strategic capacity report will allow developers across Scotland to know where there are water resource problems or wastewater treatment constraints and where capacity is currently available.

4.39 Alongside funding Scottish Water to address constraints in strategic infrastructure for all anticipated new developments, Ministers have also required Scottish Water to make significant improvements in the planning and delivery of new strategic capacity in the public system. Scottish Water is working with local authorities to identify and prioritise requirements for strategic capacity. The Regulations provide a clear framework for tackling development constraints in local infrastructure, and ensure that Scottish Water has a statutory role in contributing towards these.

4.40 Significant 'Part 3' requirements do sometimes require developers, planning authorities and Scottish Water to work together to deliver solutions and co-ordinated action is already taking place in many areas. Where investment in 'Part 3' infrastructure is included in

Scottish Water's investment programme, either through capital maintenance or the environmental programme, these costs would be borne by Scottish Water, not developers.

4.41 In addition, specific provision has been made to Communities Scotland of an additional £14 million per annum to assist in meeting the connection costs of developments of affordable housing. It would also be open to other organisations who could afford to, to assist in meeting the connection costs of a development they wanted to promote.

Question 9: What, if any, provision on reserving capacity would you support and why?

4.42 The majority of those who responded to this question were in favour of some scope being provided for capacity to be reserved, with clear rules to govern it. There was a wide variation in the periods different respondents considered that it should be possible for capacity to be reserved, ranging up to ten years. Most of those in favour of reserving capacity believed a reservation period of around 5 years was acceptable, as any shorter period would not take account of development practicalities (there was little support for the one year period proposed in the consultation paper) and any longer period could lead to development being inappropriately constrained with the result of capacity being 'locked up', and unnecessarily preventing development in an area.

4.43 The most frequently expressed view was that reserving capacity was appropriate when linked to the planning process, that is to say, for development that had planning permission or was agreed in the local plan, and lasting as long as that planning approval lasted. Respondents suggested that there needed to be flexibility built in to any arrangements to allow the release of capacity within the reservation period, provided the developer who funded the infrastructure received proper compensation. Consultees, especially local authorities, emphasised the need for dialogue between Scottish Water and planning authorities when agreeing reservation periods.

Response

4.44 Reserving capacity is a difficult issue, where the Scottish Executive is aware both of demand in specific cases, and the problems to which any system of widespread reservation of parts of the public network might give rise. A full blown system for reserving capacity which altered Scottish Water's legal duties and powers would require a careful balance to be struck and new primary legislation to be passed by Parliament. Ministers have concluded that it would not be appropriate to make statutory provision for reserving capacity.

4.45 Scottish Water's current policy on reserving capacity was set out in its response to the consultation paper.⁴ This allows reserved capacity arrangements for a period of up to 5 years under certain conditions, requires close links to the planning process, and provides a constructive basis with which to address the complex issues that arise in this area. Scottish Water's forthcoming guidance on connections should further clarify its policy in this area.

Guidance and Supporting Documents

4.46 The consultation paper noted that Scottish Water and the Water Industry Commission intended to provide clear guidance to underpin the principles established in the Regulations

⁴ Scottish Water's consultation response can be found alongside other consultation responses at: <http://www.scotland.gov.uk/Publications/2005/12/15102415/25093>

and to assist in their implementation. This was supported by a number of respondents. They recommended that guidance should be written in a clear and straightforward manner, recognising the diversity of its audience, and including information on the appeal process, whether contributions would be staged through the lifetime of a development and whether the provision of ‘Part 4’ infrastructure could be brought forward by developer’s contributions.

Response

4.47 Scottish Water, with input from the Water Industry Commission and the Scottish Executive are in the process of developing guidance on the Regulations, which seeks to provide a comprehensive guide through the process of getting a connection to Scottish Water, and covering all the issues respondents raised. Scottish Water’s guidance should be available by 1 April when the Regulations come into force. Ministers hope that Scottish Water will engage with developers on understanding their concerns, and keeping its guidance and policies under review to ensure that these provide the clarity developers require.

Infrastructure Charge

4.48 The consultation paper reported Ministers’ proposals to allow Scottish Water to introduce an infrastructure charge for new connections, as set out in the Scottish Ministers’ Statement of Policy on Charges.⁵ Our intention is to ensure that the broader reinforcement of the network, in response to demands on capacity that cannot be attributed to particular developments should be funded collectively by all new development. The charge would be levied under Scottish Water’s general charges scheme rather than in the Regulations and therefore was not considered in detail in the consultation paper. However, a number of consultees commented on the proposed charge, mainly seeking further clarification as to its purpose, how the charge would be applied, and what it would cover. There was concern from developers that the charge was simply an additional levy on development, although others welcomed the assistance it would offer in offsetting additional costs faced by Scottish Water’s customers.

Response

4.49 The infrastructure charge will be introduced by Scottish Water under its general charges scheme. It was included in the Water Industry Commission’s Final Determination of Scottish Water’s charges, at £250 per water connection and £250 per sewerage connection. The funds Scottish Water raises from this charge will be used to help address demands on capacity that cannot be attributed to particular developments. Examples of its use might include making additional provision for background growth in the system when renewing network assets, or supporting provision of substantial Part 3 assets alongside developer contributions.

4.50 It will be for Scottish Water to develop a policy on how it will use the funding secured by this charge to meet the requirement to address background growth.

Regulatory Impact Assessment

4.51 The Executive is required to undertake a Regulatory Impact Assessment (RIA) in conjunction with any new legislative proposals which have an impact on businesses.

⁵ Paragraph 27 of Scottish Ministers’ Statement of Policy Regarding Charges, which is available at: <http://www.scotland.gov.uk/Topics/Environment/Water/17583/qands3>

A Partial RIA on the Reasonable Cost Regulations was published along with the consultation paper. Only four respondents directly commented on this, although some other respondents' comments were relevant.

4.52 Scottish Water's response provided a calculation, using the Executive's housing growth predictions, of how much each of the options in the Partial RIA would cost it in terms of additional expenditure (based on 2005/06 prices):

- Option 1 (the current unregulated system) would cost £18.77m per annum;
- Option 2 (making a contribution towards 'Part 3' infrastructure only) would cost £9.48m per annum;
- Option 3 (making a contribution towards 'Parts 2 and 3' infrastructure) would cost Scottish Water £24.37m per annum; and
- Option 4 (developers meet all local infrastructure costs) would cost nothing.

Scottish Water went on to say that its preferred option was option 4 as this would reduce the burden on existing customers and be in line with other utility markets.

4.53 The other respondents recommended option 3, although at least one of these considered that a redefinition of 'Part 4' infrastructure was required. Taken broadly, the responses to the first consultation question provided clear support for option 3, with 73% of respondents agreeing that the Regulations should provide contributions towards 'Part 2' and 'Part 3' infrastructure. In response to the Small and Micro Business Test section, a respondent noted that small developers as well as larger developers could be constrained, and where this was the case, small developers might well face higher unit costs.

4.54 A Final Regulatory Impact Assessment, taking account of these comments, has been published in conjunction with this report. Hard copies will be made available to respondents to the consultation exercise, as well as being available electronically on the Executive's website at <http://www.scotland.gov.uk/Topics/Business-Industry/support/15242/1462>.

5. CONCLUSION

5.1 The draft Provision of Water and Sewerage Services (Reasonable Cost) (Scotland) Regulations 2006 have been laid before Parliament and, subject to Parliamentary approval, will come into force on 1 April 2006. Scottish Water expects to publish its connections guidance, which will take full account of the new Regulations, later this month and this will provide a practical guide to the new arrangements.

5.2 The Scottish Executive is grateful for all the input it has received to these Regulations, and would be happy to receive any further comments at any stage relating to the matters that Ministers have agreed to keep under review.

Scottish Executive
March 2006

ANNEX A: LIST OF CONSULTEES

The list below, which originally appeared in the consultation paper, indicates the extent of the initial distribution of the consultation paper, which totalled around 500 copies.

Age-related groups
Association of Scottish Community Councils
Audit Scotland
Building and construction industry organisations
Business representatives
Chambers of Commerce
Church/religious groups
Communities Scotland
Consumer organisations
Drinking Water Quality Regulator
Enterprise interests (including Local Enterprise Companies)
Environmental protection and sustainability interests
Equality groups
Historic Scotland
Legal interests
Local authorities (including CoSLA)
MSPs
National Park authorities
Planning interests
Rural and farming organisations
Scottish Civic Forum
Scottish Consumer Council
Scottish Environment Protection Agency
Scottish Federation of Housing Associations
Scottish MEPs and MPs
Scottish Natural Heritage
Scottish Parliament
Scottish Trades Union Congress
Scottish Water
Social housing interest bodies
Tourism interests (including VisitScotland)
UK Government departments and devolved administrations
Voluntary sector
Water Customer Consultation Panels
Water Industry Commission for Scotland
Water industry organisations

ANNEX B: LIST OF CONSULTATION RESPONDENTS

48 responses were received in total. Apart from one respondent who requested that their details be withheld, these are listed as follows:

Developers (including Housing Associations)

Andrew Sinclair Civil & Building Contractors
Bett Homes Limited
Craigallan Homes Ltd
GS Brown Construction Ltd
Homes for Scotland
Lands Improvement Holdings plc
Orkney Housing Association Ltd
Scottish Federation of Housing Associations
Stewart Milne Homes North
Walker Group (Scotland)

Local authorities

Aberdeen City Council
Angus Council
Argyll & Bute Council
Comhairle Nan Eilean Siar
Dumfries and Galloway Council
Dundee City Council
East Ayrshire Council
Edinburgh City Council (Housing)
Glasgow City Council
Highland Council
Midlothian Council
North Ayrshire Council
Orkney Islands Council (Chief Executive's Department)
Orkney Islands Council (Development Services)
Perth and Kinross Council
Renfrewshire Council
South Ayrshire Council
South Lanarkshire Council
West Dunbartonshire Council

Enterprise interests

Highlands and Islands Enterprise
Scottish Enterprise
Scottish Enterprise Forth Valley
Scottish Enterprise Grampian

Water industry interests & regulators

Scottish Environment Protection Agency
Scottish Water
Water Customer Consultation Panels
Water Industry Commission

Other organisations

Cairngorms National Park Authority
CBI Scotland
Crofters Commission
Royal Incorporation of Architects in Scotland
Royal Institute of Chartered Surveyors Scotland
Royal Society for the Protection of Birds Scotland
Scottish Rural Property and Business Association

Individuals

Andrew Bradford
Robert Findlay
Des McNulty MSP
One individual requested that their details be withheld