

EAST AYRSHIRE COUNCIL

11th DECEMBER 2003

DRAFT WATER SERVICES (SCOTLAND) BILL CONSULTATION ON PROPOSED PROVISIONS

Report by Director of Community Services

1. PURPOSE

- 1.1 To invite Members to consider and endorse or amend proposals for the Council's response to the consultation exercise on a draft Water Services (Scotland) Bill.

2. BACKGROUND

- 2.1 The draft Water Services (Scotland) Bill has been issued by the Scottish Executive for consultation and comments are to be with the Executive by 9th January 2004.
- 2.2 In terms of European Law dealing with anti-competitive behaviour, the Government is required to introduce a clearer framework for competition than had been provided by earlier competition legislation and the fundamental proposal in the draft Bill is to open up the water industry, to a degree, to allow for the competitive supply of water and sewerage services. The concept is similar to that which already exists in some of the other utility supply industries, e.g. gas and electricity.
- 2.3 Given the unique public health implications for water supplies, the Scottish Executive has recognised that it would not be appropriate for bodies (other than Scottish Water) to add water to the existing public supply network and/or draw sewage from the public sewerage system for treatment. The Scottish Executive's opinion is that any potential competitive benefits would be far outweighed by the potential risk to public health and the environment generally.
- 2.4 The draft Bill therefore proposes that the water and sewerage infrastructure will not be available for the physical carriage of water or sewage by any party other than Scottish Water. The proposal is that a competitor will be able to purchase the requisite water supply and/or sewerage services from Scottish Water and enter into financial agreements with third parties for the delivery of water and/or sewerage services.
- 2.5 Any competitor of Scottish Water wishing to establish such a business will require to be licensed and these licences will be available as: -
- 1) A water services retail licence (which would enable the licence holder to contract with customers for the provision of water); and
 - 2) A sewerage services retail licence (which would enable the licence holder to contract for the provision of sewerage services).

Effectively, such competitors of Scottish Water would effectively become wholesale customers of Scottish Water.

- 2.6 It is proposed that the Water Industry Commissioner will administer the licensing regime and will have powers to regulate licence fees, attach conditions, and monitor compliance. At present there is no finite life span proposed for licences after approval.
- 2.7 The new Bill will not apply to domestic customers. The Scottish Executive considers that as water charges are currently linked to Council Tax bands, any application of the new Bill to domestic customers could lead to the risk of high-band properties being “cherry picked” by licence holders, thus leaving Scottish Water with the less lucrative end of the market. This in turn could lead to increased charges for remaining customers to compensate Scottish Water for the loss of income.
- 2.8 Retail competition for the supply of water and sewerage services will therefore only be available to non-domestic premises.
- 2.9 The draft Bill also includes a requirement for Scottish Water to separate its wholesale and retail activities into separate subsidiaries, in view of the fact that it will be competing with licence holders for the supply of water and sewerage services to non-domestic customers. As Scottish Water’s retail service will in essence be a customer of its wholesale service, the only difference between it and its private competitors is that it will not require to be licensed.
- 2.10 The Water Industry Commissioner will have the power to take enforcement action on any water or sewerage services provider for contravention of licensed conditions and ultimately to revoke a licence.
- 2.11 In instances where the arrangements between a licence supply provider and a customer are terminated, Scottish Water will be required to provide a water supply to that customer for a period for up to 2 months. In circumstances where the arrangements have been terminated over non-payment of charges, and there are no reasonable prospects of recovering charges, Scottish Water will not be required to provide water after the two month period.
- 2.12 In cases where arrangements between licensed sewerage service provider and a customer are terminated however, Scottish Water must continue to provide a sewerage service to that customer.

3. DISCUSSION

- 3.1 Primarily, the new legislation is designed to address perceived shortcomings in compliance with European law and there are good grounds for supporting the proposal that Scottish Water should retain sole responsibility for controlling input to the public water supply and distribution system. These grounds are based on public health and environmental considerations.

- 3.2 From the point of view of the non-domestic consumer, there will arguably be the choice of either obtaining water and sewerage services from Scottish Water or a (presumably cheaper) competitor. From the Council's point of view, it is worth bearing in mind that if a decision was made to obtain these services from a competitor, and the latter defaulted on its payments to Scottish Water, the supply would be terminated by Scottish Water after 2 months.
- 3.3 It is however difficult to imagine a scenario where Scottish Water, as the sole provider of the product in the distribution system, would be able to offer discounted product to a third party which would then in turn compete with Scottish Water for the supply of product to non-domestic premises.
- 3.4 Draft responses to the questions set out in the consultation document appear as Appendix 1 to this report.

4. FINANCIAL IMPLICATIONS

- 4.1 In theory there should be no additional costs falling to domestic consumers of water and sewerage services. However, if a competitor was to obtain discounted water and/or sewerage services from Scottish Water and offer these to the Council, as a non-domestic consumer, at preferential rates then some financial benefits could be realised.
- 4.2 As the draft Bill appears to infer that Councils will continue to be responsible for the collection of water charges, it should be noted that the existing Billing Order expires on 31st March 2005.
- 4.3 It is the Council view that the current Billing Order fails to adequately compensate the Council for water charge collection costs and there is therefore an opportunity for the Council to highlight the need for increased compensation when the new Billing Order is formulated. The Depute Leader of the Council has already written to the Local Government and Finance Minister on this matter.

5. LEGAL IMPLICATIONS

- 5.1 The Sewerage (Scotland) Act 1968.
- 5.2 The Water (Scotland) Act 1980.
- 5.3 The Competition Act 1998.
- 5.4 The Water Industry (Scotland) Act 2002.

6. POLICY IMPLICATIONS

- 6.1 There is a policy issue concerning the opening up of what has traditionally been seen to be a public service to competition. It has to be appreciated however that the draft Bill attempts to allow compliance with European Law while at the same time ensuring the integrity of public health and environmental protection issues.

7. CONCLUSIONS

- 7.1 The Council has been asked to submit comments on the draft Water Services (Scotland) Bill and the closing date for submission is 9th January 2004.
- 7.2 The draft Bill sets out a regime which it is believed will allow compliance with anti-competition measures set out in European Law while at the same time securing the integrity of public health and environmental health issues which are fundamental to the public water supply and distribution system.

8. RECOMMENDATIONS

- 8.1 The Council is invited to: -
- (i) consider the proposed responses set out in Appendix 1 to this report;
 - (ii) remit to the Director of Community Services to submit a suitable response to the Scottish Executive; and
 - (ii) otherwise note the report.

William Stafford
Director of Community Services

WS/JFC/CAM

19th November 2003

LIST OF BACKGROUND PAPERS

1. Consultation Paper on draft Water Services (Scotland) Bill.

Any person wishing to inspect the background paper above should telephone 01563 576111 and speak to John Crawford, Head of Protective Services.

Implementation Officer: john.crawford@east-ayrshire.gov.uk

WATER SERVICES (SCOTLAND) BILL – QUESTIONS

1. Prohibition on common carriage

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

Yes: It is considered that the provisions in sections 1 to 4 of the draft Bill achieved the desired objective of prohibiting common carriage (For clarification, 'common carriage' means the introduction of water to the public distribution system by parties other than Scottish Water)..

2. Prohibition on retail competition for households

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

Yes, it is considered that the provisions of the Bill suitably achieve the prohibition of retail competition within the housing sector.

3. Licensing the provision of retail water and sewerage services

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?

Yes, the provisions in the Bill provide a reasonable basis for establishing and administering the proposed licensing regime. Whilst issues may arise over the cessation of water supply provision, the incorporation of a two month "grace" period on Scottish Water to continue the provision of water supply, and the maintenance of sewerage service provision indefinitely even with withdrawal of such service by a licensed service provider, should at least avoid any sudden matters arising relating to public health.

4. Setting wholesale charges

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

Yes, it is believed that the provisions in section 14 should ensure that retailers can contribute adequately to Scottish Water's costs, although this can only be verified once the scheme is underway and the Water Industry Commissioner has determined the relevant fees and charges.

5. Threshold

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

No. The Bill's prohibition on common carriage means that a system of transitional thresholds would be untenable.

6. Arrangements for transferring information about retail customers

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

It is desirable that at the very least there should be a clear code of conduct on such matters to ensure open ended consistency in this regard. Arrangements for the transfer of information about retail customers should be clear and open in line with the Executive's own policy.

7. Licensing Scottish Water's retail activities

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?

In theory yes, although this may not be absolutely apparent until such a subsidiary is actually established and operational.