

20 February 2008



Consultation on Planning Enforcement  
Regulations  
Planning Directorate  
The Scottish Government  
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Edinburgh  
EH6 6QQ

**SCOTTISH WATER**

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Dear Sir or Madam

**MODERNISING THE PLANNING SYSTEM: CONSULTATION ON PLANNING  
ENFORCEMENT REGULATIONS 2007**

Scottish Water welcomes the opportunity to comment on the aforementioned consultation paper.

In light of the range and complexity of issues covered by the consultation Scottish Water's response is detailed in the attached document.

Yours faithfully

**Peter Farer**  
**Senior Manager – Tactical Planning & Performance**



**MODERNISING THE PLANNING SYSTEM:  
Consultation on Planning Enforcement Regulations 2007**

General Comments

Scottish Water welcomes the opportunity to comment on the Planning Enforcement Regulations 2007 consultation paper, part of the *'Modernising the Planning System'* process currently being undertaken by the Scottish Government.

The key changes to the Enforcement Process involve the introduction of Temporary Stop Notices, Fixed Penalty Notices (FPN), Notice of Intention to Develop (NID), *'Notice requiring application for retrospective planning permission for development already carried out'* and the removal of certain types of appeal to enforcement action.

In addition to the questions posed in the text below, Scottish Water welcomes this opportunity to make some general comments, which are as follows:

- Scottish Water is a large organisation with a significant interface with the planning system as a statutory undertaker and service provider in water and drainage; as a developer in its own right, carrying out development throughout Scotland, and as a consultee (to become a Statutory Consultee during 2008) on planning applications.
- Whilst Scottish Water's headquarters are in Dunfermline, our infrastructure and operations are located across Scotland. Scottish Water therefore has to work with all Scottish Planning Authorities, collaborating at the local and national levels as appropriate.
- The proposed regulations introduce a number of additional notices and forms which require to be completed. Scottish Water, operating across all of Scotland's Local Authorities welcome's consistency within the planning process. We therefore request that a single, national standard format for all notices and forms is adopted across Scotland to standardise the process of submitting NIDs and NCDs etc, and minimise the risks of inconsistency arising from potentially different approaches to form content locally particularly for large organisations such as Scottish Water.
- With regards to the Notice of Completion of Development (NCD), it is not clear what constitutes as *'completion'*. In the case of Scottish Water there may be a time gap between the date the physical development is finished and when the development becomes operational. Scottish Water would appreciate clarification on this point. Scottish Water suggests that *'completion'* should be after the development has become operational and any defects remedied.

Specific Comments

1	Do you support the proposal that penalties should be increased for continuing breaches and if not why not?
No Comment	
2	Do you have any views on the proposed amounts for the fixed penalty in particular the proposed initial amounts?
No Comment	
3	Do you have any views on the proposed increase in the amount of each subsequent fixed penalty in particular with regard to the number of FPNs that would be required to reach the maximum and whether the fixed penalty should increase by a larger amount for each subsequent offence?
No Comment	
4	Do you have any views on the proposed level of information requested in the NID or any suggestions for other information for example declaring that any suspensive conditions had been met might be useful?
<p>As a consultee for many planning applications, Scottish Water's requirements are often realised through suspensive conditions. If the NID would provide a mechanism which would enhance planning control over suspensive conditions this would be welcomed by Scottish Water.</p> <p>It is indicated that a NID should be submitted to the local authority as soon as practicable and in any event prior to the commencement of works. As a major developer in our own right, Scottish Water would not wish to see any prescribed minimum period for submission of NID prior to development commencing.</p> <p>Where Scottish Water is undertaking development requiring the approval of a planning application, in some cases, this may also involve development permitted under Class 38 (Water Undertakings) and 43A (Sewerage Undertakings) of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended, in advance of initiating the approved planning permission. This could cause some confusion to the enforcement authority and could potentially lead to unnecessary enforcement action being initiated.</p>	
5	Are you content with the proposed time limits for recording relevant enforcement action?
<p>As a major developer with an approved capital programme of infrastructure investment up to 2010, at any one time Scottish Water is undertaking multiple developments across Scotland using in-house and partner delivery teams.</p> <p>For a large organisation such as Scottish Water, the compilation of an in-house 3-year 'enforcement register' suitable for the proposed Regulations would be an onerous 'due diligence' task, albeit that Scottish Water has had only limited experience of being the subject of the planning enforcement process. Scottish Water</p>	

would also wish to understand how the NIDs would be 'validated' and whether there would be penalty provisions for the incomplete submission of enforcement information.

While Scottish Water would not object to the proposed time limit of 3 years for disclosing all enforcement action, for the reasons of complexity referred to above, it may, however, be more appropriate to phase-in this limit over three years, from 1 year initially. This phased-in time limit would enable Scottish Water and other large service providers to compile a 3-year enforcement register without placing the requirement of the onerous task on Scottish Water.

6 *Bearing in mind that the purpose of the notice is to make people aware of the development and direct them to the appropriate contacts for further information, are you content with the level of information to be included?*

Scottish Water operates throughout the 32 Scottish Local Authorities. Currently each Local Authority uses their own individual forms for planning applications etc and this frequently results in inconsistencies in completing the forms which may cause delays in registering and processing the planning applications. We would therefore greatly appreciate that the Display of Notice requirements would be standardised nationally so that we do not have to tailor the required notices to the differing requirements of each planning authority.

7 *Are you content with the proposed categories of development for which notices would be required to be displayed, and if not, why not?*

Scottish Water undertakes development that may fall in all categories prescribed by the Draft Regulations and would be required, therefore, to frequently display notices when development is occurring. However, as stated at Q4 above, where 'permitted development' (for which no display of notice is required) is undertaken in advance of development granted planning permission (for which the display of notice is required) this could be confusing to the public and enforcement authority.

8 *Do you consider this sufficient or would you like to suggest other criteria for the siting, display size, etc. of these notices*

It is likely that Scottish Water will be required under the regulations to display on site notices for many of their developments due to the nature or scale of the development. In such cases, Scottish Water would propose to adopt a standard location for these notices to be displayed that would be at the principal boundary gate for vehicular access to the site, or, where there is not vehicular access, the principal pedestrian gate access to the site.

9 *Are you content with the proposed draft Regulations and if not, why not?*

No Comment

10	Are there any other situations where you believe use of a Temporary Stop Notice should not be permitted?
<p>With regards to Temporary Stop Notices (TSNs), the regulations clearly state that there is no right of appeal. This would be an issue of potential concern to Scottish Water and we would seek the incorporation into the Regulations of emergency provisions appropriate to our statutory responsibilities. For example, we would seek a mechanism to allow an appeal against a TSN served on emergency works which has the potential to adversely affect public health.</p> <p>We do however note that the issuing authority will have the ability to withdraw the temporary stop notice if and when they deem appropriate. Scottish Water welcomes this (Section 144A(8) of the Act) because TSNs could compromise and delay the provision of Scottish Water infrastructure if, for example, a TSN were issued by mistake or corrective action promptly undertaken. The regulations should continue to make provisions for the withdrawal of TSNs by Local Authorities prior to the end of the 28-day period.</p>	
11	Do you wish to comment generally on the draft Regulations, BIA/EIA or other issues in respect of this consultation?
No Comment	