

2012 No. 53

WATER SUPPLY

**The Water Services Charges (Billing and Collection) (Scotland)
Order 2012**

Made - - - - - *20th February 2012*

Laid before the Scottish Parliament *22nd February 2012*

Coming into force - - - *1st April 2012*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 37 of the Water Industry (Scotland) Act 2002(a) and all other powers enabling them to do so.

In accordance with paragraph 24 of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007(b), they have consulted with the Administrative Justice and Tribunals Council.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Water Services Charges (Billing and Collection) (Scotland) Order 2012 and comes into force on 1st April 2012.

(2) In this Order—

“the 1992 Act” means the Local Government Finance Act 1992(c);

“the 1992 Regulations” means the Council Tax (Administration and Enforcement) (Scotland) Regulations 1992(d);

“the 1994 Act” means the Local Government etc. (Scotland) Act 1994(e);

“the 2002 Act” means the Water Industry (Scotland) Act 2002;

“the 2010 Order” means the Water Services Charges (Billing and Collection) (Scotland) Order 2010(f);

“billing year 2012-13” means the billing year that commences on 1 April 2012 and ends on 31 March 2013;

“billing year 2013-14” means the billing year that commences on 1 April 2013 and ends on 31 March 2014;

(a) 2002 asp 3, as relevantly amended by the Water Services etc. (Scotland) Act 2005 (asp 3), section 21.

(b) 2007 c.15. A valuation appeal committee is a listed tribunal for the purposes of paragraph 24 of Schedule 7 to this Act by virtue of S.S.I. 2007/436.

(c) 1992 c.14, as relevantly amended by the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 13, paragraph 176, and S.S.I. 2005/51.

(d) S.I. 1992/1332, as amended by S.I. 1992/3290, S.I. 1994/3170, S.I. 1996/430, S.I. 1996/746, S.I. 1997/728, S.S.I. 2000/166, S.S.I. 2000/261, S.S.I. 2002/166, S.S.I. 2006/67, and S.S.I. 2006/402.

(e) 1994 c.39.

(f) S.S.I. 2010/10.

“charges scheme” means a charges scheme made under section 29A(a) of the 2002 Act for a relevant year;

“core functions” has the same meaning as in section 70(2) of the 2002 Act;

“council tax” has the same meaning as in Part II of the 1992 Act;

“dwelling” has the same meaning as in Part II of the 1992 Act;

“financial year 2011-12” means the financial year that commences on 1 April 2011 and ends on 31 March 2012”;

“financial year 2012-13” means the financial year that commences on 1 April 2012 and ends on 31 March 2013;

“financial year 2013-14” means the financial year that commences on 1 April 2013 and ends on 31 March 2014;

“financial year 2014-15” means the financial year that commences on 1 April 2014 and ends on 31 March 2015;

“local authority” means a council constituted under section 2 of the 1994 Act; and “area”, in relation to a local authority, means the local government area (within the meaning of that Act) for which the Council is constituted;

“Principles of Charging Statement” means the statement of policy made by the Scottish Ministers under section 29D of the 2002 Act in respect of the period 2010-15(b);

“relevant year” means, as appropriate, the billing years 2012-13 or 2013-14;

“relevant period” means the period from 1 April 2012 to 31 March 2015;

“Scottish Water” means the body corporate established by section 20(1) of the 2002 Act;

“sewerage charges” means charges payable under a charges scheme in respect of the provision of sewerage services to a dwelling in a relevant year;

“valuation appeal committee” means a valuation appeal committee constituted in accordance with section 29 of the 1994 Act;

“valuation appeal panel” means a valuation appeal panel constituted in accordance with section 29 of the 1994 Act;

“water charges” means charges payable under a charges scheme in respect of the provision of water supply services to a dwelling in a relevant year; and

“water services charges” means sewerage charges and water charges.

Duty to demand and recover charges

2. Every local authority must, as respects water supply and sewerage services provided in each relevant year by Scottish Water in the exercise of its core functions to dwellings within the area of the local authority, demand and recover the charges (other than charges in respect of a supply of water taken by meter) payable for those services under a charges scheme.

Obligation of local authorities to make payment to Scottish Water

3.—(1) Subject to any agreement entered into under article 7, and to paragraph (3), for each relevant year a local authority must pay to Scottish Water the sum ascertained in accordance with the following formula—

$$(A - B) \times \frac{C}{C + D} - (E \times F)$$

(a) Sections 29A and 29D were inserted by section 21(1) of the Water Services etc. (Scotland) Act 2005 (asp 3).

(b) Published on the Scottish Government’s website on 27 October 2009.

Where—

“A” is the total amount paid to the local authority as council tax or water services charges for that year by persons liable to pay that tax or those charges;

“B” is any amount falling within the definition of A which has been paid by a person and which—

- (a) has subsequently been repaid to that person; or
- (b) has subsequently been credited against a liability of that person to pay an amount which does not fall within that definition;

“C” is the total amount payable as water services charges for that year in respect of dwellings in the area of the local authority;

“D” is the total amount payable as council tax for that year in respect of dwellings in the area of the local authority;

“E” is the number of dwellings in the area of the local authority in respect of which water services charges are payable for that year; and

“F” is the sum of £5.73.

(2) For the purpose of the definitions of C and D in paragraph (1), an amount is payable as water services charges or council tax if—

- (a) it has been demanded by the local authority from a person appearing to that authority to be liable to pay it; and
- (b) it—
 - (i) has been paid;
 - (ii) remains payable; or
 - (iii) has been written off by the local authority as irrecoverable.

(3) In the formula referred to in paragraph (1), the value of (E x F) must not, in each relevant year, exceed the total value of—

- (a) (E x F) in article 3(1) of the 2010 Order for the local authority in respect of the financial year 2011-12; plus
- (b) the amount of any payment paid to the authority by Scottish Water in accordance with any agreement made under article 5 of the 2010 Order in respect of the financial year 2011-12.

Instalment payments for the billing year 2012-13

4.—(1) Where a local authority is under an obligation by virtue of article 3 to make payment to Scottish Water for the billing year 2012-13, it must make the following instalment payments to Scottish Water—

- (a) by the 14th day of each calendar month during the financial year 2012-13, 50 per cent of the amount that the local authority reasonably estimates that it would have to pay to Scottish Water by the application of the formula referred to in paragraph (2), were that formula applied at the end of that month, under deduction of any sums it has already paid to Scottish Water in respect of the relevant period;
- (b) within 14 days from the end of each calendar month that falls within the financial year 2012-13, the amount calculated by reference to the formula referred to in paragraph (2), as applied at the end of that calendar month, under deduction of the sum already paid under paragraph (a);
- (c) by the 14th day of each calendar month during the financial year 2013-14, 50 per cent of the amount that the local authority reasonably estimates that it would have to pay to Scottish Water by the application of the formula referred to in paragraph (3), were that formula applied at the end of that month, under deduction of any sums it has already paid to Scottish Water in respect of the relevant period;

- (d) within 14 days from the end of each calendar month that falls within the financial year 2013-14, the amount calculated by reference to the formula referred to in paragraph (3), as applied at the end of that calendar month, under deduction of the sum already paid under paragraph (c);
 - (e) by the 14th day of each calendar month during the financial year 2014-15, 50 per cent of the amount that the local authority reasonably estimates that it would have to pay to Scottish Water by the application of the formula referred to in paragraph (4), were that formula applied at the end of that month, under deduction of any sums it has already paid to Scottish Water in respect of the relevant period; and
 - (f) within 14 days from the end of each calendar month that falls within the financial year 2014-15, the amount calculated by reference to the formula referred to in paragraph (4), as applied at the end of that calendar month, under deduction of the sum already paid under paragraph (e).
- (2) The formula is that set out in article 3 except that—
- (a) “A” is 98% of the total amount paid so far to the local authority as council tax or water services charges for the billing year 2012-13 by persons liable to pay that tax or those charges; and
 - (b) “(E x F)” is replaced by “(E x F)/12”.
- (3) The formula is that set out in article 3 except that—
- (a) “A” is 99 per cent of the total amount paid so far to the local authority as council tax or water services charges for the billing year 2012-13 by persons liable to pay that tax or those charges; and
 - (b) “- (E x F)” is deleted.
- (4) The formula is that set out in article 3 except that—
- (a) “A” is the total amount paid so far to the local authority as council tax or water services charges for the billing year 2012-13 by persons liable to pay that tax or those charges; and
 - (b) “- (E x F)” is deleted.
- (5) The estimated amounts referred to in paragraph (1)(a), (c) and (e) must be estimated by reference to monthly billing and collection data.
- (6) This article is subject to article 7.

Instalment payments for the billing year 2013-14

5.—(1) Where a local authority is under an obligation by virtue of article 3 to make payment to Scottish Water for the billing year 2013-14, it must make the following instalment payments to Scottish Water—

- (a) by the 14th day of each calendar month during the financial year 2013-14, 50 per cent of the amount that the local authority reasonably estimates that it would have to pay to Scottish Water by the application of the formula referred to in paragraph (2), were that formula applied at the end of that month, under deduction of any sums it has already paid to Scottish Water in respect of the relevant period;
- (b) within 14 days from the end of each calendar month that falls within the financial year 2013-14, the amount calculated by reference to the formula referred to in paragraph (2), as applied at the end of that calendar month, under deduction of the sum already paid under paragraph (a);
- (c) by the 14th day of each calendar month during the financial year 2014-15, 50 per cent of the amount that the local authority reasonably estimates that it would have to pay to Scottish Water by the application of the formula referred to in paragraph (3), were that formula applied at the end of that month, under deduction of any sums it has already paid to Scottish Water in respect of the relevant period; and
- (d) within 14 days from the end of each calendar month that falls within the financial year 2014-15, the amount calculated by reference to the formula referred to in paragraph (3),

as applied at the end of that calendar month, under deduction of the sum already paid under paragraph (c).

(2) The formula is that set out in article 3 except that—

(a) “A” is 99% of the total amount paid so far to the local authority as council tax or water services charges for the billing year 2013-14 by persons liable to pay that tax or those charges; and

(b) “(E x F)” is replaced by “(E x F)/12”.

(3) The formula is that set out in article 3 except that—

(a) “A” is the total amount paid so far to the local authority as council tax or water services charges for the billing year 2013-14 by persons liable to pay that tax or those charges; and

(b) “- (E x F)” is deleted.

(4) The estimated amounts referred to in paragraph (1)(a) and (c) must be estimated by reference to monthly billing and collection data.

(5) This article is subject to article 7.

Payments received after 31 March 2015

6. If a local authority receives payments after 31 March 2015 in respect of council tax or water charges for a relevant year, the local authority must make further instalment payments to Scottish Water on account of the obligation in article 3(1) of such amounts and at such intervals as may be agreed between the local authority and Scottish Water or, failing agreement, as may be determined by the Scottish Ministers.

Agreements between local authorities and Scottish Water

7. Any obligation imposed on a local authority by articles 3, 4 or 5 may be varied by an agreement entered into between that local authority and Scottish Water.

Forms and procedures for demanding payment

8.—(1) Where, at the time of serving on a person any notice demanding council tax for a relevant year in respect of a dwelling, it appears to a local authority that water services charges are payable by that person in respect of that dwelling and have not yet been demanded, it must include a demand for those charges in that notice.

(2) No notice demanding water services charges in respect of a dwelling may be served prior to service of any notice required to be served in respect of that dwelling and the relevant year under regulation 17(1) of the 1992 Regulations.

(3) Prior to service by a local authority of any such notice as is referred to in paragraph (1), that authority must take reasonable steps to ascertain whether water services charges are payable in respect of the dwelling to which the notice relates.

(4) Where—

(a) Scottish Water—

(i) begins to provide any water supply and sewerage services to a dwelling on any day in a relevant year; or

(ii) ceases to provide any services to a dwelling on such a day; and

(b) it appears to Scottish Water that as a consequence, water charges or sewerage charges begin or, as the case may be, cease to be payable in respect of that dwelling,

Scottish Water must so advise the local authority for the area in which the dwelling is situated.

9.—(1) Any notice issued by a local authority which includes a demand for water services charges must, subject to paragraph (2), contain the following details—

- (a) the gross amount payable as water charges, prior to application of any reduction referred to in sub-paragraph (c);
- (b) the gross amount payable as sewerage charges, prior to application of any reduction referred to in sub-paragraph (c);
- (c) the amount of any reduction of water services charges attributable to paragraph 14 and Annex A of the Principles of Charging Statement;
- (d) the net amount payable as water services charges; and
- (e) the name, address and telephone number of the department or unit of the local authority to which enquiries regarding the notice may be directed, together with a note of the hours during which persons may attend at that department or unit with enquiries or during which they may make enquiries by telephone.

(2) Where a notice issued by a local authority demands the payment of both water services charges and council tax—

- (a) the amount of any reduction referred to in paragraph (1)(c) need not be shown on the notice separately from the amount of reduction of council tax attributable to discounts under section 79(a) of the 1992 Act; and
- (b) the amount referred to in paragraph (1)(d) need not be shown on the notice separately from the net amount of council tax payable.

10. For the purposes of demanding payments due to a local authority under this Order, regulations 20 to 25 and 27 of, and Schedule 1 to, the 1992 Regulations apply in respect of water services charges as those provisions applied in respect of the council water charge for the year beginning on 1st April 1995.

Appeals

11.—(1) A person may appeal to a valuation appeal committee if aggrieved by—

- (a) any decision of a local authority that water services charges are payable to it in respect of a dwelling or that the person is a person liable to pay those charges; or
- (b) any calculation made by a local authority of an amount which that person is liable to pay to it in respect of water services charges,

and the committee must make such decision as they think just.

(2) No appeal may be made under paragraph (1) unless—

- (a) the aggrieved person serves on the local authority a written notice, stating the matter by which and the grounds on which that person is aggrieved; and
- (b) one of the conditions mentioned in paragraph (3) is fulfilled.

(3) The conditions are that—

- (a) the aggrieved person is notified in writing, by the authority on which that person served the notice, that the authority believes the grievance is not well founded, but the person is still aggrieved;
- (b) the aggrieved person is notified in writing, by the authority on which that person served the notice, that steps have been taken to deal with the grievance, but the person is still aggrieved;
- (c) the period of two months, beginning with the date of service of the aggrieved person's notice, has ended without that person being notified under sub-paragraph (a) or (b).

(a) As amended by S.S.I. 2005/51.

12.—(1) An appeal under article 11 may be initiated by serving a written notice of appeal on the local authority.

(2) The notice served under paragraph (1) above must contain the following information—

- (a) the grounds on which the appeal is made; and
- (b) the date on which the aggrieved person's notice under article 11(2)(a) was served on the local authority.

(3) Where a person is aggrieved as mentioned in article 11(1), any notice of appeal under paragraph (1) must be served within 4 months of the date of service by that person of the first notice under article 11(2)(a) bringing the grievance in question to the attention of the local authority.

(4) On the receipt of a notice under paragraph (1) above, the local authority must transmit it to the secretary of the valuation appeal panel for the area of that authority.

(5) Part IV of the Council Tax (Alterations of Lists and Appeals) (Scotland) Regulations 1993(a) applies to appeals under this Order as it applies to appeals under section 81(1)(b) of the 1992 Act.

Accounts and records to be kept by local authorities

13.—(1) Without prejudice to the generality of section 96(1) of the Local Government (Scotland) Act 1973(c), a local authority must keep accounts and records of all transactions under this Order.

(2) Accounts and records of any transaction kept by a local authority under paragraph (1) must not be disposed of by it until at least 6 years have passed since the end of the financial year in which the transaction occurred.

(3) Scottish Water, or any person duly authorised by it, has the right to inspect any accounts and records kept under paragraph (1) by a local authority at such times as may be agreed between Scottish Water and the local authority, and Scottish Water are entitled to receive such copies of those accounts and records as it may reasonably require.

JOHN SWINNEY

A member of the Scottish Executive

St Andrew's House,
Edinburgh
20th February 2012

(a) S.I. 1993/355, as amended by S.I. 1996/580.

(b) As amended by S.I. 1992/1203.

(c) 1973 c.65, to which there are amendments not relevant to this order.

EXPLANATORY NOTE

(This note is not part of the Order)

Responsibility for water and sewerage services in Scotland rests with Scottish Water, established under the Water Industry (Scotland) Act 2002. Section 37 of that Act provides that the Scottish Ministers may determine that local authorities in Scotland, and not Scottish Water, are to demand and recover charges for such services and make payment to Scottish Water. This Order makes provision in that regard.

Article 2 provides, as regards the financial years 2012-13 and 2013-14, for each local authority in Scotland to be responsible for demanding and recovering charges payable in respect of water supply and sewerage services provided by Scottish Water to dwellings in the area of the local authority (other than charges for a supply of water taken by meter).

Provision is made for the calculation of the sum payable by local authorities to Scottish Water each financial year in accordance with the formula set out in article 3.

Articles 4 and 5 provide for local authorities to pay that sum in monthly instalments. Monthly instalments must be paid in two tranches, the first of which represents 50 per cent of the estimated monthly instalment, followed by the balance of the instalment within 14 days from the end of the month. The payment of sums collected in relation to the billing year 2012-13 are phased over three years to 31 March 2015. The payments of sums collected in relation to the billing year 2013-14 are phased over two years to 31 March 2015. The timing and amount of payments of sums collected after 31 March 2015 are subject to agreement between the local authority concerned and Scottish Water under article 6.

Article 7 provides for the possibility of local authorities and Scottish Water varying, by agreement, the payment arrangements imposed by articles 3, 4 and 5.

Provision is made for the forms and procedures to be used or followed by the local authorities in demanding payment (articles 8 to 10) and for charge payers to have a right of appeal to the relevant valuation appeal committee (articles 11 and 12). Article 13 requires each local authority to keep accounts and records of all transactions under the Order and gives Scottish Water the right to inspect such accounts and records.

This Order replaces the Water Services Charges (Billing and Collection) (Scotland) Order 2010 (S.S.I. 2010/10) which was in force in respect of the financial years 2010-11 and 2011-12. The value of “F” in the formula in article 3 of this Order, which represents the fee per dwelling that local authorities are entitled to charge Scottish Water for their billing and collection services, remains at the same level it was for the financial year 2011-12. The value of “(E x F)”, which represents the total fee that local authorities are entitled to charge Scottish Water for such services, is also capped in this Order, so that the total billing and collection services fee will not increase for the financial years 2012-13 and 2013-14.

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