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SCOTTISH STATUTORY INSTRUMENTS

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**2020 No. 4**

**WATER SUPPLY**

**The Water and Sewerage Services to Dwellings (Collection of Unmetered Charges by Local Authority) (Scotland) Order 2020**

<i>Made</i>	- - - -	<i>7th January 2020</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>9th January 2020</i>
<i>Coming into force</i>	- -	<i>27th February 2020</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 37 and 68(2) of the Water Industry (Scotland) Act 2002<sup>(1)</sup> and all other powers enabling them to do so.

**Citation and commencement**

1. This Order may be cited as the Water and Sewerage Services to Dwellings (Collection of Unmetered Charges by Local Authority) (Scotland) Order 2020 and comes into force on 27 February 2020.

**Interpretation**

2. In this Order—

“the 1992 Act” means the Local Government Finance Act 1992<sup>(2)</sup>,

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

“charges scheme” means a scheme approved under section 29A of the Act<sup>(3)</sup>,

“council tax” has the same meaning as it has in Part 2 of the 1992 Act,

“dwelling” has the same meaning as it has in Part 2 of the 1992 Act,

“service year” means each of the financial years beginning in 2020, 2021 and 2022,

“the services” means those services provided by Scottish Water for which a local authority must, under article 3, demand and recover the charges payable under a charges scheme,

“sewerage charges” means charges for sewerage services under a charges scheme, and

“water charges” means charges for water services under a charges scheme.

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(1) 2002 asp 3.

(2) 1992 c.14; Part 2 was amended by the Local Government etc. (Scotland) Act 1994 (c.39), schedule 13, paragraph 176 and S.S.I. 2005/51.

(3) Section 29A was inserted by section 21(1) of the Water Services etc. (Scotland) Act 2005 (asp 3).

**Local authority to demand and recover charges**

3.—(1) As respects water services and sewerage services provided within a service year by Scottish Water to a dwelling situated within a local authority's area, the local authority (and not Scottish Water) must demand and recover the charges payable for those services under a charges scheme.

(2) Paragraph (1) does not apply as respects the provision of such water services and sewerage services to a dwelling where the provision of the water services is charged on a metered basis.

**Local authority to make payments to Scottish Water**

4.—(1) In respect of the services provided within a service year, a local authority must pay to Scottish Water the sum determined by the formula—

$$((A - B) \times (C/(C + D))) - E$$

where—

“A” is the total amount paid to the local authority as council tax, water charges and sewerage charges for services provided within the service year by persons liable to pay that tax or those charges to that authority,

“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 to the local authority as water charges and sewerage charges for the services within the service year in respect of dwellings situated within its area,

“D” is the total amount payable to the local authority as council tax for services provided within the service year in respect of dwellings situated within its area, and

“E” is the amount in the schedule which corresponds to the local authority in question.

(2) For the purposes of the definitions of “C” and “D”, an amount is payable as council tax, water charges or sewerage charges 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.

**Amount and timing of payments to Scottish Water**

5.—(1) Each sum payable under article 4(1) must be paid in instalments.

(2) Each instalment must be paid within the period of 14 days beginning with the first day of each month in the payment period (“the month”).

(3) The amount of each instalment must equal—

- (a) the amount determined by the modified formula as applied at the end of the preceding month,
- (b) plus half of—

(i) the amount that the local authority reasonably estimates would be the amount determined by the modified formula were it to be applied at the end of the month,

(ii) less the amount (if any) referred to in sub-paragraph (a),

less the amount to be deducted for costs and the amount of each previous instalment.

(4) Paragraph (3)(a) does not apply if the preceding month is before the payment period.

(5) Paragraph (3)(b) applies only in relation to the first 12 instalments.

(6) Estimates for the purposes of paragraph (3)(b) must be based on monthly collection data.

(7) In this article—

“amount to be deducted for costs” means—

(a) in relation to the first instalment, an amount determined by the formula “ $E \times 1/24$ ”,

(b) in relation to each of the next 11 instalments, an amount determined by the formula “ $E \times ((N \times 2) + 1)/24$ ”, where “N” is the number of previous instalments, and

(c) in relation to each subsequent instalment, the amount “E”,

“E” has the same meaning as it has in article 4(1),

“instalment” means instalment payable in respect of the sum,

“the modified formula” means the formula in article 4(1), as it applies in respect of the services provided within the service year in question, but with the following modifications—

(a) “A” is the total amount paid so far to the local authority as council tax, water charges and sewerage charges for services within that service year by persons liable to pay that tax or those charges to that authority, and

(b) “- E” is omitted,

“payment period” means the period beginning with the first day of the service year in respect of which the sum is payable and ending with the day on which the final instalment is paid, and

“the sum” means, in respect of the services provided within the service year in question, the sum payable in accordance with paragraph (1).

### **Demanding payment: procedure**

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

(2) No such notice demanding water charges and/or sewerage charges in respect of a dwelling (for the services within a service year) may be served before the service of any demand notice required to be served in respect of that dwelling for the service year in question under regulation 17(1) of the Council Tax (Administration and Enforcement) (Scotland) Regulations 1992(4).

(3) Before serving any notice referred to in paragraph (1), the local authority must take reasonable steps to ascertain whether the water charges and/or sewerage charges referred to in that paragraph are payable to the local authority in respect of the dwelling to which the notice relates.

(4) Where, in any service year, it appears to Scottish Water that the local authority for the area within which a dwelling is situated is, or would be, responsible for collecting water charges and/or sewerage charges for the services to the dwelling, Scottish Water must, as soon as reasonably practicable, notify that authority of—

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(4) 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, S.S.I. 2006/402, S.S.I. 2012/303, S.S.I. 2012/338 and S.S.I. 2013/119.

- (a) the date on which it begins, or otherwise ceases, to provide those services, and
- (b) the address of that dwelling.

#### **Demanding payment: content of notice**

7.—(1) Any notice issued by a local authority which includes a demand for water charges and/or sewerage charges must contain details of the—

- (a) gross amount payable as water charges,
- (b) gross amount payable as sewerage charges,
- (c) amount of any reduction of those gross amounts (attributable to any statement issued under section 29D(1) of the Act<sup>(5)</sup> in so far as it applies to the service year in question),
- (d) net amount payable as water charges and sewerage charges, and
- (e) 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—
  - (i) during which persons may attend at that department or unit with enquiries, or
  - (ii) during which they may make enquiries by telephone.

(2) Where a notice issued by a local authority demands the payment of council tax and also water charges and/or sewerage charges—

- (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 of the 1992 Act<sup>(6)</sup>, 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.

#### **Demanding payment: further provision**

8. For the purposes of demanding payments due to a local authority under this Order, regulations 20 to 25 and 27 of, and schedule 1 of, the Council Tax (Administration and Enforcement) (Scotland) Regulations 1992 apply in respect of water charges and sewerage charges as those provisions applied in respect of the council water charge for the year beginning on 1 April 1995.

#### **Appeals**

9.—(1) A person may appeal to a valuation appeal committee (established under section 29 of the Local Government etc. (Scotland) Act 1994<sup>(7)</sup>) if aggrieved by—

- (a) any decision of a local authority that—
  - (i) water charges and/or sewerage charges are payable to it in respect of a dwelling, or
  - (ii) 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 charges and/or sewerage 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 notice in writing, stating the matter by which and the grounds on which that person is aggrieved, and

<sup>(5)</sup> Section 29D was inserted by the Water Services etc. (Scotland) Act 2005 (asp 3), section 21(1).

<sup>(6)</sup> Section 79 was amended by S.S.I. 2005/51.

<sup>(7)</sup> 1994 c.39.

- (b) one of the conditions mentioned in paragraph (3) is fulfilled.
- (3) The conditions are that—
  - (a) the authority on which the aggrieved person served the notice has given that person notice in writing that either—
    - (i) the authority believes the grievance is not well founded, or
    - (ii) steps have been taken to deal with the grievance,and the person is still aggrieved,
  - (b) 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).

### **Appeals procedure**

**10.**—(1) An appeal under article 9 may be initiated by serving on the local authority a notice of appeal in writing.

(2) The notice of appeal must contain the following information—

- (a) the grounds on which the appeal is made, and
- (b) the date on which the aggrieved person served the notice required by article 9(2)(a).

(3) The notice of appeal must be served within 4 months of the date on which the person first served notice under article 9(2)(a) bringing the grievance to the attention of the local authority.

(4) On receipt of the notice of appeal, the local authority must transmit it to the secretary of a valuation appeal panel (constituted in accordance with section 29 of the Local Government etc. (Scotland) Act 1994) serving the area of that authority.

(5) Part 4 of the Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993<sup>(8)</sup> applies to appeals under this Order as it applies to appeals under section 81(1) of the 1992 Act<sup>(9)</sup>.

### **Accounts and records to be kept by local authorities**

**11.**—(1) Without prejudice to the generality of section 96(1) of the Local Government (Scotland) Act 1973<sup>(10)</sup>, 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 until a period of at least 6 years, beginning with the end of the financial year in which the transaction occurred, has elapsed.

(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 is entitled to receive such copies of those accounts and records as it may reasonably require.

St Andrew’s House,  
Edinburgh  
7th January 2020

*ROSEANNA CUNNINGHAM*  
A member of the Scottish Government

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<sup>(8)</sup> S.I. 1993/355, as amended by S.I. 1996/580 and S.S.I. 2012/303.

<sup>(9)</sup> Section 81(1) was amended by the Local Government etc. (Scotland) Act 1994 (c.39), schedule 13, paragraph 176(5).

<sup>(10)</sup> 1973 c.65, to which there are amendments not relevant to this Order.

*Status: This is the original version (as it was originally made).*

## SCHEDULE

Article 4(1)

Amount to be deducted (for the cost of collection) from the sum payable under article 4 in respect of the services provided within a service year

<i>Local authority</i>	<i>Amount (£)</i>
Aberdeen City	776,126
Aberdeenshire	682,034
Angus	361,528
Argyll & Bute	289,130
Clackmannanshire	176,554
Dumfries & Galloway	484,540
Dundee City	562,502
East Ayrshire	426,298
East Dunbartonshire	311,324
East Lothian	322,059
East Renfrewshire	258,323
Edinburgh, City of	1,695,465
Eilean Siar	96,799
Falkirk	511,295
Fife	1,223,487
Glasgow City	2,569,950
Highland	765,002
Inverclyde	294,283
Midlothian	284,769
Moray	280,105
North Ayrshire	514,127
North Lanarkshire	1,136,977
Orkney Islands	64,031
Perth & Kinross	445,267
Renfrewshire	637,497
Scottish Borders	353,839
Shetland Islands	69,648
South Ayrshire	400,041
South Lanarkshire	1,072,656
Stirling	269,846
West Dunbartonshire	357,393

<i>Local authority</i>	<i>Amount (£)</i>
West Lothian	557,105

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### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes each local authority (and not Scottish Water) responsible for the collection of the charges payable for water services and sewerage services which are provided by Scottish Water to dwellings within each financial year (“service year”) from 1 April 2020 to 31 March 2023. It also requires each authority to make payments to Scottish Water so as to account for this.

Article 3 requires each local authority to collect the charges payable in respect of water and sewerage services provided to dwellings in its area (“the services”), but this collection duty does not apply to dwellings where the provision of water services is charged on a metered basis.

Article 4 provides that, in respect of the services provided by Scottish Water within each service year, a local authority must pay to Scottish Water a sum (determined by a formula) to account for the amounts collected by the authority in respect of the services provided in the authority’s area.

Articles 5 requires each sum payable under article 4 to be paid in instalments, and sets out the amount and timing of each instalment.

Articles 6 to 8 set out the forms and procedures for demanding payment. Articles 9 and 10 make provision for appeals. Article 11 makes provision in relation to keeping accounts and records.