

## **EXECUTIVE NOTE**

### **The Sewerage Nuisance (Code of Practice) (Scotland) Order 2006 S.S.I. 2006/155**

#### **Introduction**

This Order was made in exercise of the powers conferred by sections 25(1) and (3) and 34(2) of the Water Services (Scotland) Act 2005. The instrument is subject to negative resolution procedure.

These powers enable Scottish Ministers to prescribe codes of practice to assess, control and minimise sewerage nuisance. The Schedule to this Order contains the first sewerage code- "Code of Practice on Sewerage Nuisance-Assessment and Control of Odour from Waste Water Treatment Works"

#### **Policy Objectives**

The purpose of the Code of Practice is to set out the best practicable means of assessing, controlling and minimising odour nuisance at waste water treatment works. It requires the implementation of management and engineering controls, defined in the Code, in order to fulfil this purpose.

This code fulfils a Ministerial requirement to provide improvement in odour management by providing new legislative controls to replace the existing Statutory Nuisance provisions under Part III of the Environment Protection Act 1990, which were not considered sufficiently robust to control odour nuisance..

The intention is to provide statutory controls, obligations and standards by placing a duty on Scottish Water and its PFI operators to comply with the Code in order to control and minimise odour from its works and, where possible, to avoid odour nuisance, and a requirement on local authority regulators to monitor and enforce the operators' compliance with the Code.

This Code only applies to odour nuisance from waste water treatment works, which also includes pumping stations if included within the works boundary, but not stand alone pumping stations or the mains sewerage network. It is possible that future Codes of Practice may cover other parts of the sewerage network.

This Code places the following requirements on operators of WWTW:

- All WWTW will be required to meet certain baseline operational, management and control measures by the stated compliance dates;
- An Odour Management Plan (OMP) must be produced for all major works (representing 394 of the 1860 WWTWs in Scotland). The remaining small works are mainly septic tanks that have not been subject to substantive odour complaint and although a mandatory individual OMP is not required the other technical controls of the Code will apply to them if an odour nuisance exists;

- The OMP will detail the site specific operational, management and odour control measures that will be adopted at each individual site that reflect the best practicable means of assessing, controlling and minimising odour nuisance. The OMP will be produced in three phases beginning with a generic management plan and complaint procedure through to the site specific measures to implement the management and engineering requirements of the Code;
- An Odour Improvement Plan (OIP) must be produced where the baseline operational, management and control measures are being implemented but an odour nuisance exists, to identify and evaluate the sources and causes of the odour and provide resolution measures in timescales to be approved by the relevant local authority;
- The first phase of an OIP must also be produced for WWTW at which an odour nuisance exists when the Code comes into force.

## **Consultation**

In accordance with the requirements of section 25(8) of the Water Services etc. (Scotland) Act 2006, the Scottish Ministers consulted Scottish Water, all local authorities and other bodies that they considered appropriate about the proposed Code of Practice. A full public consultation exercise was carried out from October 2005 to January 2006, and a second consultation exercise was carried out with the Scottish Odour Steering Group (SOSG) from February to March 2006. SOSG comprises officials from Scottish Water, the Water Industry Commission, local authorities, Water Watch, Scottish Environmental Protection Agency and the Scottish Executive.

SOSG also ran a series of three national awareness seminars with both operators and regulators in November 2005 to explain the provisions and implementation procedures to further inform the consultation process.

SOSG will repeat the process in week commencing 24 April 2006 to provide implementation training to ensure understanding of obligations and expectations, including OMP and OIP production and promotion of partnership working, to meet compliance timescales.

SOSG are to produce a new odour complaints system to enable operators, regulators and complainants to log, check and monitor progress of all odour complaints to resolution, scheduled to be implemented later in 2006.

## **Financial Effects**

### Introduction

No separate full Regulatory Impact Assessment has been included as it is not been possible to establish Scottish Water's possible additional capital costs for code compliance at this juncture.

Scottish Water did not consider statutory code compliance as part of the Quality & Standards III investment programme, although costs were provided for the separate Ministerial objective of minimising odour at the most malodorous 35 waste water treatment works. However a partial RIA was subject to public consultation with the draft code, detailing the operational costs and benefits to both operator and regulator.

The code has no increased financial effects on the Scottish Executive, local government or on business than that for existing provisions other than the costs of statutory code compliance. These mainly relate to operational costs to produce, implement and enforce the required management controls of OMPs and OIPs.

Capital costs of £42m have been granted by the Water Industry Commission to Scottish Water to meet the new essential standard under the Quality & Standards III investment programme to minimise odour at the 35 most malodorous works in 2006-14, which should fulfil the capital investment maintenance needs of the operator.

#### Costs to Scottish Executive

Costs only relate to the contractual engagement of an independent odour consultant at £50k per annum to assist SOSG in producing the voluntary and statutory Codes, undertake further cost benefit analysis with Scottish Water of the 35 most malodorous sites, and provide implementation training.

#### Costs to local authorities

The only costs are administrative operational costs in enforcing code compliance by inspecting the OMPs for major works annually. Assuming 5 hours per inspection at £30 per hour at the 394 sites costs **£59k per annum**. Investigation of works receiving odour nuisance complaints would be similar to existing costs incurred through enforcing the Statutory Nuisance Regime. Thus costs can be absorbed within existing operational maintenance budgets..

#### Costs to other bodies, individuals and businesses

The operational costs to Scottish Water and its PFI operators are primarily the production of OMPs for all 394 major sites at an estimated cost of £2.5k per site, plus a non-statutory generic OMP for smaller works at £10k, totalling **£995k**. There are around 100 known works with odour nuisance problems; therefore the estimated cost of producing OIPs for these works at £7.5k per site would add an additional operational cost of **£750k**. These costs are one-off costs spread over a more than one operating year and should be absorbed within the operator's existing operational maintenance budgets.

The Executive has previously carried out assessments of the capital costs for avoiding odour nuisance at existing works and has subsequently validated Scottish Water's most recent cost estimate. The validation exercise confirmed that sum of £42m granted in the WICs determination of December 2005 is sufficient to minimise odour at the worst 35 sites, but these would not include PFI operated works. It should be noted that Scottish Water did not bid separately for code compliance. This estimate is

presently subject to further cost benefit analysis by Scottish Water and the Executive's appointed consultant, which should inform whether Scottish Water are required to bid for an interim determination for additional capital to provide required odour abatement equipment. This analysis should be completed by May 2006.

### Summary

It is not envisaged that the required additional operational costs for both operator and regulator to ensure code compliance are significant enough to require additional funding to present levels afforded to meet obligations to control odour nuisance.

The additional costs to the local authority regulators are minimal but the benefits include a standard framework of management controls required on the operator to enforce code compliance.

The additional operational costs to Scottish Water and their PFI operators are estimated to total around £1m for 2006 and £0.75m for 2007 to produce the required OMPs and OIPs. The benefits are the implementation of a statutory framework of management controls within a realistic phased timeframe, and the provision of best practicable means outlining measures to prevent, stop or minimise odour nuisance. These will enable the operator to work with the regulator to resolve odour problems and assure the public that action will be taken.

Capital funding to the operator is still under discussion, with Scottish Water maintaining the code compliance is a new requirement requiring possible replacement of existing plant and new abatement equipment. The Executive maintain the determination provided by the WIC to minimise odour nuisance at the worst 35 works, which does not include the 20 PFI sites, will provide the majority of new capital funding required for those works with odour nuisance. The subsequent cost benefit analysis due in May 2006 will be submitted to SOSG to decide the makeup of the 35 list, and inform Scottish Water if it requires to pursue an interim determination through the Water Industry Commission.

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