

Net Zero, Energy and Transport Committee
Tuesday 3 March 2026
11th Meeting, 2026 (Session 6)

Note by the Clerk on Public Services Reform (Scottish Water) Order 2026 (draft)

Overview

1. At this meeting, the Committee will take evidence from the Cabinet Secretary for Climate Action and Energy and officials on the Public Services Reform (Scottish Water) Order 2026 (draft), before debating a motion in the name of the Cabinet Secretary inviting the Committee to recommend approval of the instrument.
2. This is a draft Scottish Statutory Instrument (SSI), which requires approval by resolution of the Parliament before it can become law. More information about the instrument is summarised below:

Title of instrument: [The Public Services Reform \(Scottish Water\) Order 2026](#)

Laid under: section 14(1) and (7) of the [Public Services Reform \(Scotland\) Act 2010](#)

Laid on: 27 January 2026

Procedure: Affirmative

Lead committee to report by: 7 March 2026

Commencement: If approved, the instrument comes into force on the day after the day on which it is made.

Procedure

3. On 3 October 2025 the proposed draft Order was laid before the Parliament along with the explanatory document (SG/2025/239) to fulfil the requirements of sections 26 and 27 of the Public Services Reform (Scotland) Act 2010 (“the 2010 Act”).
4. Under certain circumstances, the 2010 Act can stipulate that additional requirements are undertaken before an affirmative instrument can be laid before Parliament for approval. This provides a higher level of scrutiny than the standard affirmative procedure, giving Parliament and stakeholders an opportunity to influence the content of an instrument before it is finalised (referred to as the super affirmative procedure).
5. Under section 26 of the 2010 Act, Scottish Ministers must consult organisations representing interests that would be substantially affected, bodies whose functions would be affected (or their representatives), the Scottish Law Commission, where appropriate, and any other persons Ministers consider

suitable. Ministers must also lay before the Parliament a proposed draft Order and an explanatory document, send these to those being consulted, and consider any representations received within a 60-day period following laying.

6. In this case, the proposed draft Order and explanatory document were laid on 3 October 2025. The explanatory document states that the 60-day consultation period ended on 17 December 2025, with the Scottish Ministers having had regard to the representations made, as is required by the 2010 Act. No changes were made to the proposed draft Order following that consultation (see evidence received section below).
7. The draft affirmative instrument was laid on 27 January 2026. The Order is subject to the affirmative procedure and, if approved by the Parliament, will come into force the day after it is made.
8. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament.
9. Once laid, the instrument is referred to:
 - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
 - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
10. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.
11. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee:
 - an evidence session with the Minister and officials, followed by
 - a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.
12. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote. If the motion is agreed to, it is for the Chamber to decide, at a later date, whether to approve the instrument

Delegated Powers and Law Reform Committee consideration

13. The DPLR Committee considered the instrument on 3 February 2026 and reported on it in its [16th Report, 2026](#). The DPLR Committee made no recommendations in relation to the instrument.

Purpose of the instrument

14. The purpose of the draft Order is to amend the [Water Industry \(Scotland\) Act 2002](#), which sets the statutory requirements for the composition of the Board of Scottish Water, to reduce the minimum number of executive members required on the Board of Scottish Water from 3 to 2 and amend the provisions on the composition of executive and non-executive members as a result.
15. Currently, the Board of Scottish Water must include:
 - 5 to 8 non-executive members, and
 - 3 to 5 executive members,
 - with non-executive members in a majority of at least two.
16. At present, Scottish Water has three executive members, the CEO, CFO and COO and eight non-executive members. The COO is expected to retire in the second half of 2026, and the Board has agreed to move to a structure with two executive members (CEO and CFO).
17. Without legislative change, Scottish Water would be required to appoint another executive member to meet the current statutory minimum. The proposed Order would reduce the minimum number of executive members from three to two, allowing Scottish Water to adopt its preferred structure while retaining flexibility to appoint additional executive members (up to five) in future if needed.
18. The Scottish Government considers that this will improve the efficiency, effectiveness and economy of Scottish Water's governance, align Board composition with industry best practice (most comparable UK water companies appoint only the CEO and CFO as executive board members), deliver financial savings of £40,000–£60,000 per year, and leave the Board's remit unchanged, with a continued non-executive majority.
19. The explanatory document accompanying the instrument is included in annex A. It includes a summary of consultation undertaken on the instrument and the anticipated financial effects. The following impact assessments have been carried out:
 - Child Rights and Wellbeing Impact Assessment (CRWIA).
20. No other impact assessments were considered necessary due to the nature of the proposal. The Cabinet Secretary for Climate Action and Energy confirmed that no Business and Regulatory Impact Assessment is required, as the instrument has no financial effects on the Scottish Government, local government, or business, beyond the budget impact for Scottish Water itself.

Evidence received

21. At its meeting on 28 October 2025, the Committee agreed to seek the views of the Water Industry Commission for Scotland (WICS), Consumer Scotland and

relevant trade unions (Unite the Union, Unison Scotland and GMB Scotland) on the draft Order. In particular, the Committee sought views on the rationale for reducing executive membership of the Board and on any potential implications for governance, accountability and workforce engagement.

22. At a subsequent meeting on 9 December, the Committee agreed to [write](#) to the Scottish Government drawing the response to its attention. This letter, which includes the responses received from stakeholders, is provided in Annexe B.
23. A brief summary of the issues raised by stakeholders and the Scottish Government's response to them is set out below.

WICS and Consumer Scotland

24. While emphasising that decisions on Scottish Water's Board composition rest with Scottish Water and the Scottish Government, WICS's response to the Committee notes the organisation's chair wrote to Scottish Water seeking assurances that responsibilities previously held by the Chief Operating Officer, such as staffing, workforce engagement and health and safety, will continue to be properly overseen at Board level.
25. Consumer Scotland expressed support in principle for reducing executive Board members from three to two, considering that this could strengthen scrutiny and accountability. It highlighted the retiring COO's expertise in customer services and stated that it is "important that Scottish Water's Board continues to have the expertise to focus on achieving positive consumer outcomes, and actively consider its responsibilities with regards to the Consumer Duty on public bodies."
26. The explanatory document says that the Scottish Government has previously sought and received assurance from Scottish Water that these matters will continue to have appropriate visibility either through the CEO's ongoing executive membership on the Board, or through updates from relevant senior leaders.

Trade Unions

27. The trade unions representing Scottish Water staff argue that the order presents an opportunity to allocate Board seats to each of the three recognised trade unions. They believe this would align with the Scottish Government's Fair Work principles by strengthening workers' voice, improve clarity around Board discussions that may affect jobs, pay and conditions, and help avoid the misunderstandings experienced during recent industrial disputes. The unions said any trade union representatives appointed to the Board should be unremunerated for the role.
28. In response to these comments, the explanatory document says that the Water Industry (Scotland) Act 2002 requires under paragraph 2(4) of schedule 3, that one of the non-executive members appointed to the Scottish Water Board must be a person appearing to the Scottish Ministers to have special knowledge of the interests of the employees of Scottish Water and the process of appointing that

member involves trade union consultation. Scottish Ministers are content that this approach remains progressive within the public body landscape and is the most appropriate mechanism for employee interests being properly considered at Board level.

29. As set out above, the explanatory document confirms that, having considered the consultation responses, the Scottish Ministers have made no changes from the proposed draft Order laid on 3 October 2025.

Report

30. The Convener may invite the Committee to delegate to him authority for considering and approving a draft report prepared by the clerks after the meeting. In relation to any report finalised in this way, Committee Members may ask to see the draft and comment on it before the Convener authorises it for publication.

**Clerks to the Committee
February 2026**

Annexe A: Explanatory document

THE PUBLIC SERVICES REFORM (SCOTTISH WATER) ORDER 2026

SSI 2026 No. XXX

INTRODUCTION

1. This Explanatory Document has been prepared in respect of the draft Public Services Reform (Scottish Water) Order 2026 (“the proposed draft Order”), which, if subsequently approved by the Parliament, will be made in exercise of powers conferred by section 14(1) and 14(7) of the Public Services Reform (Scotland) Act 2010 (“the 2010 Act”), which enables the Scottish Ministers, by order, to make any provision which they consider would improve the exercise of public functions having regard to efficiency, effectiveness and economy.
2. The proposed draft Order does not make provision modifying, conferring, abolishing, transferring, or providing for the delegation of, any function; nor does it create any new person or body on which functions are conferred. Scottish Water is listed in schedule 5 of the 2010 Act.

BACKGROUND AND REASONS FOR THE PROVISION

3. Paragraph 2 of schedule 3 of the Water Industry (Scotland) Act 2002 (“the 2002 Act”) provides for Scottish Water’s Board to consist of non-executive and executive members. Sub-paragraph (1) sets the upper and lower limits on the respective numbers of non-executive and executive members on the Board of Scottish Water: Scottish Water must have a Board consisting of between 5 and 8 non-executive members and between 3 and 5 executive members. Sub-paragraph (2) requires that non-executive members must always be in a majority of at least two.
4. The number of executive members on Scottish Water’s Board has varied over time. At present, there are three executive members who are nominated by the Board from among the members of the Scottish Water Executive Leadership Team: the Chief Executive Officer (CEO), Chief Financial Officer (CFO) and Chief Operating Officer (COO). There are currently eight non-executive members (including the Chair) appointed to the Board by the Scottish Ministers.
5. The Scottish Water Board has agreed that it would be appropriate, after the retirement of the COO during the second half of 2026, to move to a structure with two executive members. The CEO and CFO would remain on the Board.
6. The proposed draft Order will enable the Board composition to be changed in line with Scottish Water’s preferred corporate structure. Without legislative change, Scottish Water would be required to maintain a minimum of three executive members and designate another member of its Executive Leadership Team as an executive Board member in 2026 following the retiral of the current COO.

EFFECT OF PROVISIONS OF PROPOSED DRAFT ORDER

7. The draft Public Services Reform (Scottish Water) Order 2026 proposes to reduce the minimum number of executive members of Scottish Water from three to two.
8. With reference to section 14(1) of the 2010 Act, the Scottish Ministers are satisfied that this proposed amendment to paragraph 2 of schedule 3 of the 2002 Act will, by enabling Scottish Water to implement a Board composition that will be aligned to its preferred corporate structure and reduce the number of executive members on its Board improve the exercise of the public functions of Scottish Water, particularly in regard to its efficiency, effectiveness and economy.
9. The proposed draft Order will enable Scottish Water to have a more streamlined Board structure and one which is reflective of executive leadership structures in comparable organisations. Scottish Water has benchmarked its revised structure against a number of comparator organisations and found that the majority of UK-based water and wastewater organisations appoint two executive members on to their boards and these are most commonly the CEO and CFO. Scottish Ministers consider that the proposal would align Scottish Water with current best practice, and this view is shared by the Scottish Water Board.
10. The responsibilities of the COO will be redistributed across existing members of the Scottish Water Executive Leadership Team. The remit of the Board's activities would be unchanged, and the CEO will provide the direct line to the Board on operational performance.
11. The Scottish Water CEO currently holds the overall Board responsibilities in relation to health and safety and can provide updates on operational matters presently; the CEO also brings operational experience from outside the Scottish water industry in that regard. This ensures that the Board will continue to operate effectively and benefit from a wide range of executive expertise without a third executive member on the Board.
12. Enabling Scottish Water to reduce the minimum number of executive Board members required in paragraph 2(1)(b) of schedule 3 of the 2002 Act, will result in financial savings of approximately £40,000 to £60,000 per annum, based on a salary differential of £20,000 to £30,000 per annum of an Executive Director, plus associated costs relating to pension contributions and National Insurance. Reducing the statutory minimum from three to two executive members allows Scottish Water to avoid the ongoing cost of a third executive Board member.
13. While this would enable Scottish Water to reduce the current number of executive members from three to two, it would retain the ability to increase that number up to the existing limit of five if this was deemed appropriate at any point in the future, subject to other requirements in the 2002 Act being met.

Similarly, the amendment would not preclude a future restructuring where the COO role is reinstated in the organisation.

Section 16(2) of the Public Services Reform (Scotland) Act 2010

14. With reference to provision contained in the proposed draft Order, the relevant conditions set out in section 16(2) of the Public Services Reform (Scotland) Act 2010 are considered to have been met.
15. The Scottish Ministers consider that the provisions of the proposed draft Order are proportionate to the policy objective. The policy objective is that Scottish Water should be able to operate under a Board composition that reflects its preferred corporate structure which is aligned to industry best practice. The existing provision in the 2002 Act does not enable this. Only the minimum amendments necessary to the 2002 Act are being proposed and, the amendments made by the Order ensure that, as is currently the case, there will always be majority of non-executive members compared to executive members.
16. With reference to section 16(2)(b) to (e) of the 2010 Act, the proposed draft order does not remove any necessary protection and does not remove, confer or modify any functions of Scottish Water.

CONSULTATION

17. Scottish Government officials have engaged with Scottish Water on the proposals set out in the draft proposed Order, noting that the proposals relate solely to the composition of its Board.
18. In line with the conditions set out in section 26(1) and (2) of the Public Services Reform (Scotland) Act 2010, the Scottish Ministers will undertake a sixty day consultation period commencing on the day that the proposed draft Order is laid before Parliament (calculated without taking account of any time during which Parliament is dissolved or in recess for more than four days).
19. Key interested parties will receive a copy of the draft proposed Order and this memorandum, including Scottish Water, the Water Industry Commission for Scotland, the Drinking Water Quality Regulator, the Scottish Environment Protection Agency and Consumer Scotland.

Scottish Government
October 2025

Annexe B: Letter to Cabinet Secretary for Climate Action and Energy and responses received from stakeholders

Gillian Martin MSP

Cabinet Secretary for Climate Action and Energy
Scottish Government

15 December 2025

Dear Cabinet Secretary,

Public Services Reform (Scottish Water) Order 2026

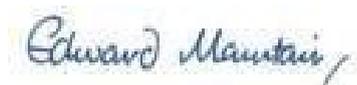
At its meeting on 28 October, the Net Zero, Energy, and Transport Committee considered its approach to scrutinising the Public Services Reform (Scottish Water) Order 2026, which follows a super-affirmative procedure for parliamentary scrutiny. As you know, the draft Order would amend the Water Industry (Scotland) Act 2002 to change the composition of the Board of Scottish Water, reducing the minimum number of executive members required on the Board from three to two.

The Committee agreed at that meeting to seek the views of the Water Industry Commission for Scotland, Consumer Scotland and relevant trade unions (Unite the Union, Unison Scotland and GMB Scotland) on the draft Order. In particular, the Committee sought views on the rationale for reducing executive membership of the Board and on any potential implications for governance, accountability and workforce engagement.

At its subsequent meeting on 9 December, the Committee agreed to draw the responses received to your attention. These responses are attached as an annexe to this letter.

The Committee also agreed to take no further action at this stage, pending the laying of the instrument. Once laid, the Committee will consider the Order in the usual way under the affirmative procedure.

Yours sincerely,



Edward Mountain MSP Convener

Annexe – Responses to the Committee on The Public Services Reform (Scottish Water) Order 2026

Response from Consumer Scotland, 26 November 2025

Dear Mr Mountain

Thank you for your letter dated 7 November seeking Consumer Scotland's views on changes to paragraph 2 of schedule 3 to the Water Industry (Scotland) Act 2002.

Consumer Scotland is the statutory body for consumers in Scotland. Established by the Consumer Scotland Act 2020 we are accountable to the Scottish Parliament. The Act provides a definition of consumers which includes individual consumers and small businesses that purchase, use or receive products or services.

Our purpose is to improve outcomes for current and future consumers, and our strategic objectives are:

- to enhance understanding and awareness of consumer issues by strengthening the evidence base
- to serve the needs and aspirations of current and future consumers by inspiring and influencing the public, private and third sectors
- to enable the active participation of consumers in a fairer economy by improving access to information and support.

In principle we support the proposal to reduce the number of Scottish Water executive Board members from three to two, on the basis that this should enhance effective scrutiny and accountability.

We note that the current Chief Operating Officer, who is retiring after being a Board member for many years, has extensive experience of leading customer services. It is important that Scottish Water's Board continues to have the expertise to focus on achieving positive consumer outcomes, and actively consider its responsibilities with regards to the Consumer Duty on public bodies.

Consumer Scotland works closely with Scottish Water, and we will continue to encourage and support the development of measures that deliver for consumers.

Please do not hesitate to contact us if you require any further information or clarification.

Yours sincerely

Sam Ghibaldan

Response from WICS, 27 November 2025

Dear Convenor

Thank you for your letter of 7 November seeking the Commission's views on the proposed changes to Scottish Water's Board composition.

The Commission Board considered this matter at its meeting on 6 November. We recognise that decisions on board composition and size are for Scottish Water's Board and the Scottish Government, and therefore do not intend to comment on the substance of the proposal.

However, our Chair has written to Scottish Water seeking assurances that the areas previously covered by the Chief Operating Officer role, including staffing, workforce engagement and health and safety, will continue to receive appropriate visibility and oversight at Board level.

We have also noted the reference to financial savings arising from this change and look forward to understanding the overall costs and savings of the revised leadership structure once it is fully implemented.

We would welcome the opportunity to engage further on matters relevant to the Committee's scrutiny and oversight of the water industry. We have today published our assessment of [Scottish Water's performance in 2024–25](#) and would be pleased to discuss its findings, or any related matters, with the Committee at a suitable opportunity.

Yours sincerely,

David Satti
Chief Executive

**Joint response from Unite the Union, UNISON Scotland and GMB
Union officials representing the workforce at Scottish Water, 3
December 2025**

Dear Mr Mountain, MSP

We write as the trade union officials representing the workforce at Scottish Water in response to the consultation being conducted by the Scottish Parliament's Net Zero, Energy & Transport Committee regarding their scrutiny of the Public Services

Reform (Scottish Water) Order 2026 and, in particular, the proposal to amend paragraph 2 of schedule 3 of the Water Industry (Scotland) Act 2022, setting out requirements for the composition of the Board of Scottish Water.

In our view, the consideration of changes to the composition of the board presents an opportunity to consider allocating seats on the Scottish Water Board to each of the three trade unions representing the workforce at Scottish Water.

Such a move would, we believe, be in line with the Scottish Government's Fair Work and Fair Work First principles to expand "workers voice" in decision making forums and discussions potentially affecting the workforce.

It is also our belief that it would reduce the potential (as experienced in efforts to resolve recent industrial disputes at Scottish Water) for confusion regarding the nature of discussions at the Scottish Water Board affecting the jobs, wages and terms and conditions of the workforce at Scottish Water – and, therefore, would be potentially conducive to ensuring improved industrial relations moving forward.

We note from your recent communication regarding the committee's scrutiny of the proposal regarding the future composition of the Scottish Water Board that one of the considerations relates to cost. Therefore, in suggesting that places on the Scottish Water Board should be reserved for trade union representatives, we wish to make it clear that such representatives would not expect and would not accept remuneration for performing their role as board members.

Yours sincerely

Sam Ritchie
Unite the Union
Regional Officer

Rae Montgomery-Cahill
Unison Scotland
Regional Organiser

Claire Greer
GMB Scotland
Regional Organiser