

EXPLANATORY MEMORANDUM TO

The Water Supply (Water Quality) (Amendment) Regulations (Northern Ireland) 2010

SR 2010 No. 128

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for Regional Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under powers contained within the Water and Sewerage Services (Northern Ireland) Order 2006¹ and section 2(2) of the European Communities Act 1972² and is subject to the negative resolution procedure.

2. Purpose

- 2.1. These Regulations will enhance the clarity of existing regulations, and implement the aspects of the Drinking Water Directive (Council Directive 98/83/EC) which are the responsibility of DRD and have not been fully transposed.

3. Background

- 3.1. The European Commission considers that the member state (UK) has failed to correctly transpose the requirements of the Drinking Water Directive (the Directive). The Commission believes that our national law doesn't reflect what is set out by the Directive. Responsibility for the implementing the Directive in NI is split between DRD, DOE and Food Standards Agency (FSA). DRD's Directive responsibilities are transposed through the Water Supply (Water Quality) Regulations (Northern Ireland) 2007³ (the Regulations). These Regulations will make the changes required by the EU Commission in respect of DRD responsibilities which have been inadequately transposed.

4. Consultation

- 4.1. No full public consultation was carried out as the amendments must be made to fulfil Drinking Water Directive transposition requirements. However, the member state (UK) carried out a targeted consultation with WaterUK (who represent the UK water industry) to take their views on the proposed amendments. WaterUK supported the principles behind the Regulations as well as the need to make the proposed amendments.

¹ 2006 No. 3336 (N.I. 21)

² 1972 c.68

³ S.R 2007 No. 147 as amended by S.R 2009 No. 246

Concern was expressed in respect of two amendments, namely failures where water is supplied to the public and disinfection. WaterUK were concerned that water companies would be expected to take on responsibility on additional risk in respect of protecting public health in public buildings. This concern has been addressed by transposing the requirement to address water quality failures in premises where water is supplied to the public in separate Regulations. The Department for Regional Development and the Department of the Environment, acting jointly, will assume responsibility for addressing such failures under the separate Regulations. WaterUK also expressed concern that the amendment relating to disinfection may lead to a more onerous regime than is the intent of the Directive. This concern will be allayed once DWI produces the accompanying guidance.

5. Equality Impact

- 5.1. The new provisions have been screened for equality impact. There was found to be no requirement for a full Equality Impact Assessment.

6. Regulatory Impact

- 6.1. The Department has carried out a partial Regulatory Impact Assessment and found that there will be no adverse effects on businesses and, therefore, a full RIA is not necessary

7. Financial Implications

- 7.1. There are no financial implications associated with the introduction of these Regulations.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Regulations are fully compatible with the NI Act 1998.

9. EU Implications

- 9.1. A transposition note has been prepared and is attached.

10. Parity or Replicatory Measure

- 10.1. These Regulations are required to implement the requirements of the Drinking Water Directive (Council Directive 98/83/EC) which have not yet been fully implemented.
- 10.2. Similar Regulations have been introduced in England and Wales.

11. Additional Information

- 11.1. Not applicable.

Department for Regional Development

Transposition of Council Directive 98/83/EC

The Water Supply (Water Quality) (Amendment) Regulations (NI) 2010

1. This Transposition Note has been prepared by the Department for Regional Development to show how the elements of Drinking Water Directive 98/83/EC (“the Directive) which were identified by the EU Commission (in its Reasoned Opinion letter of 20/11/09) as being inadequately transposed have been transposed.
2. This Note has been published to accompany The Water Supply (Water Quality) (Amendment) Regulations (NI) 2010 which were laid before the Assembly on 29 March 2010.

The Directive

3. The Drinking Water Directive aims to protect human health from the adverse effects of any contamination of water intended for human consumption by ensuring it is wholesome and clean.

Responsibility for transposition

4. Responsibility for the transposition of the Directive in Northern Ireland falls to the Department for Regional Development (DRD), the Department of the Environment and the Food Standards Agency. DRD implemented its public drinking water Directive responsibilities into national legislation through the Water Supply (Water Quality) Regulations (Northern Ireland) 2007. The Water Supply (Water Quality) (Amendment) Regulations (Northern Ireland) 2010 will make the changes required by the EU Commission in respect of DRD responsibilities which have been inadequately transposed.

Means of transposition of the main elements of the Directive

5. The following Table sets out how the elements of the Directive identified as being inadequately transposed have now been transposed in relation to the Directive in Northern Ireland.

Article	Objective	Implementation	Responsibility
7(1)	Where disinfection forms part of the preparation or distribution of water intended for human consumption, any contamination from disinfection by-products must be kept as low as possible	Regulation 2(9) makes it clear that disinfection by-products must be kept to a minimum without compromising disinfection.	The water undertaker

8(1)	Member states shall ensure that any failure to meet Article 5 parametric values is immediately investigated	Regulation 2(5)(a) ensures that any investigations must be carried out immediately	The water undertaker
8(2)	If water intended for human consumption does not meet Article 5 parametric values the Member State shall ensure the necessary action is taken as soon as possible to restore its quality and shall give priority to their enforcement action	The Water Supply (Water Quality) Regulations (Northern Ireland) 2007, the Water Supply (Water Quality) (Amendment) Regulations (Northern Ireland) 2009 and the Water and Sewerage Services (Northern Ireland) Order 2006 established a competent authority with a duty to enforce and possess appropriate enforcement powers. This legislation was communicated to the EU Commission in the MNE database on 18 December 2009.	DRD
8(7)	Member states shall ensure that, where redial action is taken, consumers are notified except where the competent authorities consider their non-compliance with the parametric value to be trivial.	An amendment is made to the Water and Sewerage Services Order (Northern Ireland) 2006 to ensure consumers are notified of undertakings (Article 31(3)(b)).	The water undertaker
9(1)	Member states may provide for derogations from the parametric values set out in Annex I, Part B or set in accordance with Article 5(3), up to a maximum value to be determined by them, provided no derogation constitutes a potential danger to human health and provided that the supply of water intended for human consumption in the area concerned cannot otherwise be maintained by any other reasonable means...	The amendments set out in regulation 2(6) ensure that a derogation will not be permitted to extend to the microbiological parameters and parametric values set out in Annex I, Part A of the Directive.	DRD
Annex II Table	Table B1 of Annex II to the Directive sets out the	Schedule 1 reformats the existing table to aid	The water undertaker

B.1	minimum frequency of sampling and analysis for water intended for human consumption supplied from a distribution network, tanker or used in food-production undertakings.	clarity of the Regulations and give sufficiently clear and precise transposition of the requirements set out in Annex, Table B1.	
Annex II Table B.1	Table B1 of Annex II to the Directive sets out the minimum frequency of sampling and analysis for water intended for human consumption supplied from a distribution network, tanker or used in food-production undertakings.	Schedule 2 reformats the existing table to aid clarity of the Regulations and give sufficiently clear and precise transposition of the requirements set out in Annex, Table B1.	The water undertaker

Department for Regional Development
29 March 2010