

Business and Regulatory Impact Assessment

Title of Proposal

The Public Water Supplies (Scotland) Amendment Regulations 2017 (“the 2017 Regulations”)

Purpose and intended effect

- **Background**

The Public Water Supplies (Scotland) Regulations 2014 (“the 2014 Regulations”) implement Council Directive 98/83/EC on the quality of water intended for human consumption (“the Drinking Water Directive”) and Council Directive 2013/51/Euratom on the protection of the health of the general public with regard to radioactive substances in water intended for human consumption (“the Euratom Directive”) in so far as they apply to public water supplies in Scotland.

Some changes were made to the Drinking Water Directive by Directive (EU) 2015/1787 (“the Amending Directive”). These changes need to be transposed into domestic legislation by 27 October 2017.

- **Objective**

To transpose the requirements of the Amending Directive into the Scottish domestic legislation on public water supplies. In addition, the 2017 Regulations adjust and simplify some related monitoring and risk assessment provisions in the 2014 Regulations, so that these align more closely with the requirements of the Drinking Water and Euratom Directives.

The Amending Directive amends Annexes II and III to the Drinking Water Directive, which lay down the minimum requirements of the monitoring programmes for all water intended for human consumption and the specifications for analysis of different parameters. The specifications in the annexes require to be updated in the light of scientific and technical progress and to be consistent with other EU legislation.

Annex II has been amended to align to the latest updates to the World Health Organisation’s water safety plan approach based on risk assessment and risk management principles laid down in the WHO Guidelines for Drinking Water Quality. Experience has shown that, for many (particularly physico-chemical) parameters in drinking water, the concentrations present would rarely result in any breach of limit values. Monitoring and reporting such parameters without practical relevance imply significant costs, especially where a large number of parameters need to be considered. Introducing flexible monitoring frequencies under such circumstances presents potential cost-saving opportunities that would not damage public health or other benefits. Flexible monitoring also

reduces the collection of data that provide little or no information on the quality of the drinking water. The amendments to Annex II allow Member States to derogate from the monitoring programmes they have established, provided credible risk assessments are performed, which may be based on the WHO Guidelines and should take into account the monitoring carried out under Article 8 of Directive 2000/60/EC (“the Water Framework Directive”).

Annex III has been amended to allow laboratories to use the most up-to-date European or equivalent international standards for the analysis of parameters and for the methods of analysis to be validated in accordance with the most recent standards.

- **Rationale for Government intervention**

The latest amendments require to be transposed into domestic legislation by 27 October 2017. The 2014 Regulations contribute to the Healthier strategic objective, as well as the National Outcome that we live longer, healthier lives. The main changes being made to the 2014 Regulations by the 2017 Regulations are as follows –

Part 4 of the 2014 Regulations (monitoring of public water supplies) is amended by replacing 2014 regulation 5 to 10 with new monitoring provisions that are closely aligned to the requirements of the Drinking Water Directive and Euratom Directive. Current provisions in the 2014 Regulations which require additional monitoring at treatment works, service reservoirs, tankers and new sources are retained. Although the new provisions would allow some deviation from the default monitoring requirements, each monitoring programme prepared by Scottish Water must be approved by the Drinking Water Quality Regulator for Scotland (DWQRS). Until a new monitoring programme has been approved for a water supply zone, Scottish Water must continue to carry out monitoring in accordance with the previous requirements of the 2014 Regulations.

Given the 2017 Regulations allow a degree of flexibility, as an additional safeguard they place specific responsibilities on the DWQRS regarding review and approval of monitoring programmes. In support of this, new Regulation 15A confers a power on the DWQRS to provide guidance or give directions to Scottish Water in relation to the exercise of Scottish Water’s functions under Part 4 of the 2014 Regulations.

The 2017 Regulations amend Part 8 of the 2014 Regulations, which concerns the risk assessment of water supplies. Under the current provisions Scottish Water must assess each treatment works and its connected supply system so as to establish whether or not there is a significant risk of supplying unwholesome water from the combined system (or any part of it). The risk assessments were required to be carried out before 1 October 2015, or for any combined system not being used on 1 January 2015, to be carried out before that system is used. The 2017 Regulations adjust these provisions to specify that these risk assessments must establish whether the measures in place to control risks to human health throughout the water supply chain are

working effectively and that water at each point of compliance meets the water quality standards. The risk assessment must also be carried out using a methodology approved by the DWQRS. The 2017 Regulations require Scottish Water to complete risk assessments which comply with these requirements by 1 October 2018 , or where a combined system is not in use on 27 October 2017, before that system is used.

The provisions regarding monitoring frequency are amended. The new Schedule 1A sets minimum monitoring frequencies for “Group A” and “Group B” parameters . “Group A” parameters have a higher frequency and includes, for example E. coli. These frequencies are slightly lower than current requirements, though Scottish Water can only adopt them following the approval of DWQRS. Monitoring frequencies are based on the volume of water rather than the population served as is currently the case. Domestic provisions relating to requirements for increased frequency of monitoring for aluminium, iron and manganese when the water source is a surface water are retained.

The 2017 Regulations make some other consequential and other changes to the 2014 Regulations, for clarity or so that the principal Regulations align more closely with the requirements of the above Directives. These include new definitions of “consumer’s tap” and “point of compliance”.

Following consultation with Food Standards Scotland (FSS), the current provision (contained within the definition of “human consumption purposes”) that the DWQR is responsible for determining whether the water affects the wholesomeness of food, and accordingly whether the water quality standards must be complied with, after consultation with FSS has been amended to reflect that under EU food hygiene regulations some use of non-drinking water in food production is permitted, and that domestically competence in relation to food hygiene regulations, and for determining the wholesomeness of foodstuffs, lies with the FSS, or where delegated by the FSS, the relevant local authority.

Consultation

- **Within Government**

We informally discussed our intention to make these Regulations with colleagues in the UK and Republic of Ireland Regulators’ Group, who are making similar provisions.

- **With stakeholders**

The amendments made by the 2017 Regulations make relatively minor adjustments to the 2014 monitoring and risk assessment duties of Scottish Water. As the 2017 Regulations will have little, if any, impact on the public as consumers of water supplied by Scottish Water and the rationale for, and impact of, the Amending Directive have been fully set out in the public consultation on the new regulations on private supplies, we did not undertake a public consultation on these Regulations. We consulted Scottish Water,

together with the Water Industry Commission for Scotland (WICS), Citizens Advice Scotland and Food Standards Scotland, on a shortened, 6-week, timescale, from 16 June to 28 July 2017.

- **Business**

The 2017 Regulations are not expected to impact on businesses other than Scottish Water.

Options considered

Option 1 – Do nothing

This option ran the risk of infraction proceedings or a fine by the EU as the Amending Directive will not be transposed.

Option 2 – Transpose Amending Directive by amending 2014 Regulations

This option was the simplest and most straightforward way of transposing the Amending Directive.

Option 3 – Transpose Amending Directive by replacing the 2014 Regulations with a fresh set of Regulations

The 2014 Regulations were a comparatively recent consolidation of the legislation governing the public supply. To replace them at this stage would be a further major exercise and mean that we would be unlikely to be able to transpose the Amending Directive by the deadline. We are also aware that the European Commission intend to publish proposals for a complete revision and replacement of the Drinking Water Directive by the end of this year.

Option 4 – Implement the Amending Directive by non-regulatory means e.g. guidance for Scottish Water

This would not be sufficient to transpose the provisions of the Directives into UK law.

Sectors and groups affected

Scottish Water and their regulators and consumer representatives.

Benefits

There would be no identifiable benefits associated with option 1 or 3, and option 4 would be unlikely to be compliant with EU law. Option 3 transposes the Amending Directive timeously and avoids the risk of infraction.

Costs

There are no identifiable costs or burdens associated with option 2.

Scottish Firms Impact Test

No impact on businesses other than Scottish Water has been identified.

Competition Assessment

Using the Competition and Markets Authority Competition Filter Questions we have concluded that the proposals will neither directly or indirectly limit the number or range of suppliers, limit the ability of suppliers to compete, or reduce suppliers' incentives to compete vigorously.

Test run of business forms

The 2017 Regulations do not contain any additional requirements for forms.

Legal Aid Impact Test

The proposals do not have any legal aid implications.

Enforcement, sanctions and monitoring

The 2014 Regulations are enforced by the Drinking Water Quality Regulator for Scotland (DWQRS). These amendments do not contain any additional enforcement provisions beyond an explicit power of the DWQRS to give directions and guidance to Scottish Water as to the exercise of its functions under the monitoring of public water supplies provisions. This gives legal effect to what is currently accepted practice.

Implementation and delivery plan

The 2017 Regulations were subject to a 6-week consultation of the main interested parties before making and laying the regulations on 5 and 7 September 2017 respectively with a coming into force date of 27 October 2017 to meet the EU transposition deadline.

Post-implementation review

The 2014 Regulations, as amended by the 2017 Regulations, may be reviewed in the light of any revision of the Drinking Water Directive, on which proposals are likely to be produced before the end of 2017, or otherwise within 10 years.

Summary and recommendation

Option 2 was recommended as the simplest and most straightforward way of transposing the Amending Directive.

• Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	None	Infraction proceedings or fine

2	Full transposition of EU law by means of Amendment Regulations	No identifiable cost to Scottish Water, no infraction risk
3	Full transposition of EU law by means of a fresh set of Regulations	Delay in transposing the Amending Directive resulting in infraction proceedings or fine; familiarisation and training costs to Scottish Water
4	Implement the Amending Directive by non-regulatory means	Insufficient to transpose the Amending Directive fully, resulting in infraction proceedings or fine

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date: 5 September 2017

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