

## **POLICY NOTE**

### **THE PUBLIC WATER SUPPLIES (SCOTLAND) AMENDMENT REGULATIONS 2017**

**S.S.I. 2017/281**

These Regulations (“the Regulations”) are made in exercise of the powers conferred by sections 76B, 76F(5) and (6), 76J, 101(1) and (1A) and 109(1) of the Water (Scotland) Act 1980 and section 2(2) of the European Communities Act 1972. The Regulations are subject to the negative procedure.

#### **Policy objectives**

1. The main purpose of the Regulations is to amend the Public Water Supplies (Scotland) Regulations 2014 (“the principal Regulations”) to make fresh and supplementary provision to transpose and implement, for Scotland, Commission Directive (EU) 2015/1787 (“the Amending Directive”)<sup>(1)</sup>.

The principal Regulations aim to protect human health from the adverse effects of any contamination of water supplied by Scottish Water for human consumption purposes by ensuring that it is wholesome. They implement, in respect of public supplies, Council Directive 98/83/EC on the quality of water intended for human consumption (“the Drinking Water Directive”)<sup>(2)</sup> and Council Directive 2013/51/Euratom laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption (“the Euratom Directive”)<sup>(3)</sup>. The Amending Directive amends Annexes II and III to the Drinking Water Directive, which lay down the minimum requirements of the monitoring programmes for water intended for human consumption and the specifications for analysis of different parameters and grant a certain degree of flexibility in monitoring, allowing for less frequent sampling in certain circumstances.

2. The Regulations also revoke and re-enact (with modifications) some provisions of the principal Regulations which transpose the Euratom Directive. These changes are made to make the principal Regulations more coherent and simpler to follow.

3. In addition, some consequential and other changes are made to the principal Regulations for clarity or so that the principal Regulations align more closely with requirements of the above Directives. These include new definitions for ‘consumer’s tap’ and ‘point of compliance’.

#### **Main amendments made to the principal Regulations**

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<sup>1</sup> OJ L 260, 7.10.2015, p. 6

<sup>(2)</sup> OJ L 330, 5.12.1998, p. 32, as amended by Regulation (EC) No 1882/2203 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1), Regulation (EC) No 596/2009 of the European Parliament and of the Council (OJ L 188, 18.7.2009, p. 14) and Commission Directive (EU) 2015/1787 (OJ L 260, 7.10.2015, p. 6) and Corrigendum (OJ L 111, 20.4.2011, p.31).

<sup>(3)</sup> OJ L 296, 7.11.2013, p. 12.

4. Part 4 of the principal Regulations (monitoring of public water supplies) is amended by replacing regulations 5 to 10 with new monitoring provisions that are closely aligned to the requirements of the Drinking Water Directive, as updated by the Amending Directive, and the Euratom Directive. Current provisions in the principal Regulations which require additional monitoring at treatment works, service reservoirs, tankers and new sources are retained. Although the new monitoring 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 principal Regulations.

5. Given the Regulations allow a degree of flexibility, as an additional safeguard the Regulations place specific responsibilities on the DWQRS regarding the 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 principal Regulations.

6. The Regulations amend Part 8 of the principal 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 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 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.

7. 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 include, for example, E. coli. These frequencies are slightly lower than current requirements, though Scottish Water can only adopt them following the approval of the DWQRS. The new 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 restated.

8. Following consultation with Food Standards Scotland (FSS), the current provision (contained within the definition of "human consumption purposes") that the DWQRS is responsible for determining whether water affects the wholesomeness of food, and accordingly whether the water quality standards must be complied with, has been amended to reflect that under EU food hygiene regulations some use of non-drinking water in food production is permitted, and 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**

9. The Regulations make relatively minor adjustments to the monitoring and risk assessment duties placed on Scottish Water by the principal Regulations and will have little, if any, impact on the public as consumers of water supplied by Scottish Water. As the rationale for, and impact of, the Amending Directive was fully set out in the public consultation on the new Regulations on private supplies, a limited consultation of the key stakeholders on a draft of the Regulations took place from 16 June to 28 July 2017. During the course of the consultation, FSS proposed the further amendment to the principal Regulations noted above. Stakeholders were content with the provisions transposing the Amending Directive.

## **Impact assessment**

10. A partial Business and Regulatory Impact Assessment (BRIA) was included with the consultation. A full BRIA has since been completed, having regard to the consultation responses. An Equality Impact Assessment (EQIA) and a Child Rights and Wellbeing Impact Assessment (CRWIA) were not carried out as the Regulations are not considered to have any significant impact in relation to these matters.

## **Financial effects**

11. The Regulations have no impact on businesses other than Scottish Water, and no costs have been identified attributable to transposing the Amending Directive.

Drinking Water Quality Division  
The Scottish Government  
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