

WATER ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Miscellaneous

Section 58 Water fluoridation 331.

Section 58: Fluoridation of water supplies.

The current provisions within section 87 to 91 of WIA allow health authorities to request water undertakers to fluoridate water supplies but place no duty on water undertakers to accede to such requests. This section replaces sections 87 and 89 to 91 of the WIA (fluoridation of water supplies at the request of health authorities). These provide for fluoridation of water supplies where Strategic Health Authorities (in relation to England) and the Assembly (in relation to Wales) make arrangements with undertakers.

332. New section 87 puts water undertakers under a new statutory obligation to accede to requests from Strategic Health Authorities (in relation to England) and the Assembly (in relation to Wales) to enter into arrangements to fluoridate water supplies. Water undertakers are not required to enter into arrangements unless an indemnity under new section 90 has been given.
333. New subsection 87(7) provides that the relevant authority shall consult with the Water Services Regulation Authority in relation to the terms to be included in the agreement, particularly those which affect the operation of the water undertaker's supply system. New subsection (8) requires that where, for example, a water distribution system overlaps the boundaries of two adjoining SHAs, they co-operate in making arrangements to fluoridate with a water undertaker.
334. New section 87A(1) restates that the concentration of fluoride in the water supply shall be maintained at a target concentration of one milligram per litre. New subsections (2) to (5) provide for SHAs or the Assembly to make arrangements for a lower concentration where it is not technically practical to achieve one milligram per litre.
335. New section 87B introduces provision for determination of terms, where the relevant authority and a water undertaker fail to agree the terms of an arrangement to fluoridate.
336. New section 87C(2) restates the two chemical compounds which are permitted to be used in fluoridating water supplies. Subsections (3) and (4) allow water companies to supply fluoridated water in areas not covered by arrangements under section 87 where it is necessary to do so due to operational constraints, such as dealing with serious deficiency in supply.
337. New section 88A introduces new regulation making powers for the Secretary of State (and the National Assembly for Wales) to reduce the target concentration of fluoride to below one milligram per litre. This might be appropriate if, for example, it was found that as a result of increased use of discretionary fluorides like toothpaste, the desired

*These notes refer to the Water Act 2003 (c.37)
which received Royal Assent on 20th November 2003*

reductions in tooth decay could be achieved at lower concentrations of fluoride in the water supply. Reductions may apply nationally or to a particular region.

338. New section 89 provides for consultations. It introduces new regulation making powers for the Secretary of State (and the National Assembly for Wales) to make regulations on the consultation process which relevant authorities will have to follow before requesting water undertakers to enter into arrangements or varying or terminating them.
339. New section 90 provides for the Secretary of State (with the consent of the Treasury) and the National Assembly for Wales, to indemnify water undertakers and licensed water suppliers in respect of liabilities which they may incur in complying with the arrangements for fluoridation and introduces a new regulation making power enabling the Secretary of State (and the National Assembly for Wales) to make provision in relation to the matters in respect of which an indemnity may be given and the forms and terms of such indemnity.
340. New subsection 90A requires SHAs with fluoridation schemes to monitor their effects on the health of their populations and publish reports on their findings at four yearly intervals.
341. New section 91 (1)-(6) provides for the existing pre-1985 fluoridation schemes to be treated as if they been established under the amended Act except that the consultations required on proposals for new fluoridation schemes do not apply to them. Subsection (9) repeals the provisions of section 91 of the WIA and Schedule 7 to the WIA that related to pre-1985 fluoridation schemes. Subsection (10) is a consequential provision providing for amendments to the WIA to be reflected in the Water Fluoridation Act 1985 which is still in force in Scotland. (The Scottish Parliament would be responsible for any wider changes to the legislation governing fluoridation in Scotland). Subsections (11) to (14) provide that certain outstanding applications made by health authorities to water companies to fluoridate their water be treated as requests under new section 87(1) of the WIA.