

EXPLANATORY MEMORANDUM TO

THE WATER SUPPLY (WATER QUALITY) (AMENDMENT) REGULATIONS 2018

2018 No. 706

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The instrument amends the existing legislative framework for drinking water quality in England in respect of public supplies provided by water undertakers and wholesale licensees (holders of water supply licences with a wholesale authorisation). It is designed to implement changes made to Council Directive 98/83/EC on the quality of water intended for human consumption known as the Drinking Water Directive (“the DWD”) and make other amendments to the legal regime. The Drinking Water Inspectorate (DWI), acting on behalf of the Secretary of State, enforces the legislation.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 This instrument amends the Water Supply (Water Quality) Regulations 2016 (S.I. 2016/614) (the “2016 Regulations”). The 2016 Regulations transposed the DWD (OJ L 330, 5.12.1998, p.32) 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 (OJ L 296, 7.11.2013, pp.12-21). The 2016 Regulations also supplement the provisions set out in Chapter 3 of the Water Industry Act 1991 (1991 c.56).
- 4.2 This instrument primarily transposes new monitoring requirements introduced by Commission Directive (EU) 2015/1787 (the “Directive”) amending Annexes II and III of the DWD. In particular, the amendments introduce a new risk based approach to monitoring and new specifications for the method of analysis of different parameters. It also makes minor amendments to the 2016 Regulations more readily understandable for the benefit of water undertakers and wholesale licensees. This is in keeping with the Government’s commitment to better regulation.

- 4.3 This instrument is designed to sit alongside the Private Water Supplies (England) (Amendment) Regulations 2018 (S.I 2018/707) which are being laid at the same time. These concern the regulation of private water supplies in England and make similar amendments to the Private Water Supplies (England) Regulations 2016 (S.I. 2016/618) in order to transpose new requirements introduced into the DWD. They are also intended to complement the equivalent regulations for Wales, the Water Supply (Water Quality) Regulations 2018 (S.I. 2018/647 (W.121)) so that the two regimes in England and Wales align.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 This instrument applies to relevant water undertakers and wholesale licensees whose areas are wholly or mainly in England.
- 5.3 Wales has its own drinking water quality legislation which applies to relevant water undertakers and wholesale licensees whose areas are wholly or mainly in Wales.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The primary purpose of this instrument is to transpose the Directive amending Annexes II and III to the DWD. The Directive introduces a risk based approach to monitoring which if met, allows a reduction in the frequency of sampling and analysis of parameters. This is aligned with the principles of the World Health Organisation (WHO) which has developed the Water Safety Plan approach based on risk assessment and risk management principles. The Directive also specifies updated methods of analysis for certain parameters and performance characteristics in the light of scientific and technical progress. The production, distribution, monitoring and analysis of drinking water will also be secured by internationally recognised standards EN 15975-2¹ and EN ISO/IEC 17025² both of which require certification. Accreditation schemes for both standards are currently being developed by the DWI. Although the Directive only requires the methods of analysis (and the quality management system practices surrounding them) to be performed to standard EN ISO/IEC 17025, we have extended this to cover actions leading up to analysis, for example, the collection, handling, storage and transportation of samples. This will ensure samplers are competent and reduce the risk of contamination of a sample before analysis occurs. Water undertakers and wholesale licensees are aware of the standard.
- 7.2 The WHO's Water Safety Plan approach has already been adopted, in part, in the 2016 Regulations. This instrument will therefore replace and update the existing risk

¹ Entitled "Security of drinking water supply – Guidelines for risk and crisis management – Part 2: Risk management". See the Explanatory Note at the end of the instrument for information on how to obtain a digital or hard copy.

² Entitled "General requirements for the competence of testing and calibration laboratories". See the Explanatory Note at the end of the instrument for information on how to obtain a digital or hard copy.

based approach. The criteria to reduce the frequency of, or cease, sampling and analysis has also been changed to allow further reductions in sampling frequencies and, where appropriate, the cessation of monitoring for parameters.

- 7.3 This instrument includes transitional and saving provisions primarily related to the change to performance characteristics. Old performance characteristics can continue to be used during a transitional period beginning with the date on which this instrument comes into force and ending with 31 December 2019. The relevant provisions in the 2016 Regulations are therefore saved (with modifications) until the transitional period comes to an end.
- 7.4 The instrument also gives effect to one domestic policy change relating to when samples from a tanker, distributing a short term drinking water supply, must be taken. Samples must now be taken at commencement of the supply rather than 48 hours after commencement.
- 7.5 This instrument incorporates some additional wording and updates some out of date references in the 2016 Regulations to improve clarity, in keeping with the Government's commitment to better regulation.
- 7.6 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period, the Government will continue to negotiate, implement and apply EU legislation.
- 7.7 This instrument is laid later than the Directive's deadline. The write round to the Home Affairs and Reducing Regulation sub-committees seeking cross government clearance to launch the consultation was anticipated for May 2017, but was delayed until 13 July, a month after the General Election and shortly before summer recess. A 6 week consultation on this instrument and S.I. 2018/707 was launched on 12th September and closed on 24 October, 3 days before the transposition deadline. We received a total of 225 responses, considerably higher than previous consultations. It therefore took longer than anticipated to review and summarise the responses, as well as undertake changes to the draft instrument and complete other government processes prior to laying.

Consolidation

- 7.8 The Department does not intend to consolidate the relevant legislation. The 2016 Regulations were a consolidation and this is the first set of amendments since, therefore consolidation at this stage is not suitable.

8. Consultation outcome

- 8.1 A public consultation on this instrument and the Private Water Supplies (England) (Amendment) Regulations 2018 ran for 6 weeks from 12 September to 24 October 2017. All 26 water undertakers and wholesale licensees operating in England were invited to respond to the consultation. We received 24 responses, 17 via Citizen Space and 7 via email or post, in respect of this instrument. 18 of the responses were from water undertakers and wholesale licensees and 6 from other relevant organisations, for example, the British Standards Institute and IDEXX veterinary laboratories. The DWI held a workshop in April 2016, to which all water undertakers and wholesale licensees were invited, to explain the changes in advance of the consultation. Given

the very specific nature of the instrument and the prior engagement with the water industry, a 6 week consultation period was considered to be appropriate for responses in this case.

- 8.2 There was widespread support for the instrument. 90% of those who answered welcomed the new risk based approach to standard EN 15975-2 and thought it would continue to protect drinking water supply whilst focussing sampling and analysis on the highest risks. 7 water undertakers and wholesale licensees queried what would happen with any current reductions in sampling frequencies until the new risk based approach criteria could be applied. This has since been clarified by the DWI³. A further 65% agreed with the change to performance characteristics noting that, as common standards were being established and worked examples provided, the new characteristics would be acceptable. 30% had concerns with the robustness of results using the new characteristics but it is thought these can be alleviated with the SCA Blue Book⁴ that is under development. Five water undertakers and wholesale licensees wanted further information on the accreditation scheme that would be brought in for certifying the competence of samplers to standard EN ISO/IEC 17025, specifically the timescale for compliance and the scope of the standard. The DWI are aware that, almost all water undertakers and wholesale licensees are already in compliance with the standard. The Government response⁵ (which was published in May 2018) confirms that samplers are only required to be accredited when carrying out sampling to demonstrate compliance with the DWD. Those taking operational samples, as part of the wider Water Safety Plan, are not required to comply.
- 8.3 Finally, 5 water undertakers and wholesale licensees felt the changes to the sampling requirements for drinking water in tankers could create additional burdens, delay making alternative supplies available and might not benefit the protection of public health. However, the very reason the change has been made is to protect public health. Taking samples at commencement will provide assurance that the water contained in the vessel is microbiologically wholesome at the time it is first deployed. The change should not cause a delay in making alternative supplies available. Water undertakers and wholesale licensees should follow recognised good practices with regard to water hygiene and have appropriate monitoring in place for tankers so that water placed in them it is not contaminated.

9. Guidance

- 9.1 The DWI will publish revised guidance on their website providing detail on the practical application of the 2016 Regulations, as amended by this instrument, and clarity on technical aspects relevant to the provision of drinking water.

³ Information Letter 04/2017 was issued in December 2017 and can be found here:

<http://www.dwi.gov.uk/stakeholders/information-letters/2017/04-2017.pdf>. A copy may also be obtained from the Water Quality Team, Department for Food and Rural Affairs, 3rd Floor, Seacole Block, 2 Marsham Street, London SW1P 4DF.

⁴ A method for implementing / calculating the “uncertainty of measurement” performance characteristics will be developed to be used by all laboratories to ensure consistency. This is known as a “blue book method” (part of the Standard Committee of Analysts (SCA) Blue Books).

⁵ This can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/526137/drinking-water-consult-sum-resp. A copy may also be obtained from the Water Quality Team, Department for Food and Rural Affairs, 3rd Floor, Seacole Block, 2 Marsham Street, London SW1P 4DF.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies. A Regulatory Triage Assessment⁶ calculated that, once the changes are implemented, there will be a saving of £600,000 per year for 10 years for the water industry.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 Regulation 39 of the 2016 Regulations requires the Secretary of State to carry out a review of the regulations and to produce a report setting out the conclusions of the review within 5 years of the data on which the 2016 Regulations came into force (the first due in June 2021) and at 5-year intervals thereafter.

13. Contact

- 13.1 Louise Hunt at the Department for Environment, Food and Rural Affairs (Telephone: 0208 225 8467 or email: louise.hunt@defra.gsi.gov.uk) can answer any queries regarding this instrument.

⁶ This can be found here: [https://consult.defra.gov.uk/water-quality/drinking-water-regulations-2017/supporting_documents/Water%20Supply%20Water%20Quality%20Regulatory%20Triage%20Assessment.pdf]. A copy may also be obtained from the Water Quality Team, Department for Food and Rural Affairs, 3rd Floor, Seacole Block, 2 Marsham Street, London SW1P 4DF.