
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2014 No.

The Public Water Supplies (Scotland) Regulations 2014

PART 6

INVESTIGATION AND REMEDIAL ACTION

Scottish Water to investigate immediately any failure or likely failure

17.—(1) Where Scottish Water has reason to believe that water supplied by it for human consumption purposes has failed, is failing, or is likely to fail to—

- (a) satisfy a requirement of regulation 4(2); or
- (b) meet the prescribed concentration or value for a parameter in Table C,

it must immediately investigate (and take action) to establish the matters in paragraph (2).

(2) The matters to be established are—

- (a) whether the water has failed, is failing or is likely to fail to—
 - (i) satisfy a requirement of regulation 4(2); or
 - (ii) meet the prescribed concentration or value for a parameter in Table C; and
- (b) for any such failure or apprehended failure (“the failure”)—
 - (i) the parameter or other element, organism or substance to which the failure relates;
 - (ii) the cause and extent of the failure;
 - (iii) whether the failure is due to a domestic distribution system in premises where water is supplied to the public, or to the maintenance of that system;
 - (iv) whether the failure is due to a private domestic distribution system, or to the maintenance of that system; and
 - (v) whether the failure constitutes a potential danger to human health.

(3) Where Scottish Water has—

- (a) investigated a failure or apprehended failure for the purposes of paragraph (1); and
- (b) that investigation establishes that the failure is due to a domestic distribution system in premises where water is supplied to the public, or to the maintenance of that system,

it may recover the expenses reasonably incurred by it (in carrying out that investigation) from the person who owns or is otherwise responsible for that domestic distribution system.

Scottish Water to notify immediately any potential danger to human health

18.—(1) Where Scottish Water establishes under regulation 17(1) that the failure in question constitutes a potential danger to human health, it must, by notice, immediately notify this to—

- (a) the Drinking Water Quality Regulator for Scotland;
- (b) the Scottish Ministers;

- (c) each local authority for the area in which the potential danger occurs; and
 - (d) those of its consumers who are likely to be affected by the failure.
- (2) The notice required by paragraph (1)(d) must inform the consumers—
- (a) of the nature of the failure;
 - (b) that the failure constitutes a potential danger to human health;
 - (c) of any remedial action taken, or to be taken, by Scottish Water; and
 - (d) of any action that Scottish Water considers is necessary or desirable for the consumer to take to protect human health.

Scottish Water to report on its investigation etc.

19.—(1) On completion of the investigation mentioned in regulation 17(1), Scottish Water must, as soon as possible, report the findings of the investigation to—

- (a) the Drinking Water Quality Regulator for Scotland;
 - (b) the Scottish Ministers; and
 - (c) where the failure in question is due to a domestic distribution system (or to the maintenance of that system) in premises where water is supplied to the public, the local authority for the area in which the premises is located.
- (2) The report must specify—
- (a) the matters in regulation 17(2)(a) and (b);
 - (b) whether the failure has ceased and, if so, whether it is likely to recur;
 - (c) any action which Scottish Water considers must be taken—
 - (i) to restore, as soon as possible, the quality of the water in question so that it satisfies the requirements of regulation 4(2);
 - (ii) to protect human health until the quality of the water is restored; and
 - (iii) to minimise the risk of the water failing to satisfy any such requirement; and
 - (d) any such action taken, or to be taken, by Scottish Water.

(3) Where the report specifies that the failure is due to a domestic distribution system (or to the maintenance of that system) in premises where water is supplied to the public, Scottish Water must as soon as possible inform such persons as the Drinking Water Quality Regulator for Scotland or the Scottish Ministers may, by notice given to Scottish Water, specify—

- (a) of the cause and extent of the failure;
- (b) whether the failure constitutes a potential danger to human health;
- (c) of any remedial action taken, or to be taken, by Scottish Water; and
- (d) of any action that Scottish Water considers is necessary or desirable for those persons to take to protect human health.

Scottish Water to restore water quality

20.—(1) Subject to paragraphs (4) and (5), where an investigation under regulation 17(1) establishes that the failure in question is on-going, Scottish Water must as soon as possible—

- (a) take such remedial action as is necessary to restore the quality of the water (to which the failure relates) so that it—
 - (i) satisfies the requirements of regulation 4(2)(b) and (c); and
 - (ii) meets the prescribed concentration or value for a parameter in Table C; and

(b) where the water fails to satisfy a requirement of regulation 4(2) in relation to—

(i) copper (item 10) in Table B; or

(ii) lead (item 15) in Table B,

take action to modify or replace such of Scottish Water's pipes and associated fittings as it knows or has reason to believe have the potential for contributing to copper or lead in the water supplied to the premises, so as to eliminate that potential (whether or not copper or lead in those pipes contributed to the failure).

(2) Except where it considers that the failure in question is trivial, Scottish Water must inform (in so far as it has not already done so) those of its consumers who are likely to be affected by the failure of any remedial action taken under paragraph (1)(a).

(3) For the purposes of securing compliance with paragraph (1)(a), the Drinking Water Quality Regulator for Scotland and the Scottish Ministers must, in the exercise of their enforcement functions, give priority to enforcement action having regard, among other things, to—

(a) the extent to which the prescribed concentration or value for a parameter (in Table A, Table B and Table C) has not been met; and

(b) the potential danger to human health.

(4) Where the investigation establishes that the failure in question is due to a domestic distribution system in premises where water is supplied to the public (or to the maintenance of that system), paragraph (1)(a) does not apply in so far as a local authority must, under section 76FB of the 1980 Act⁽¹⁾, require the person who owns or is otherwise responsible for that system to take any such remedial action as is required by that paragraph.

(5) Where the investigation establishes that the failure in question is due to a private domestic distribution system (or to the maintenance of that system) and there is a risk that the water in question is failing or will fail to satisfy a requirement of regulation 4(2)(b) or (c) or meet the prescribed concentration or value for a parameter in Table C, Scottish Water must ensure that—

(a) appropriate measures are taken to reduce or eliminate that risk (such as advising the owner and any occupiers of the premises served by the private domestic distribution system in question of any possible remedial action that they could take); and/or

(b) other measures (such as appropriate treatment techniques) are taken to change the nature or properties of the water before it is supplied so as to reduce or eliminate that risk.

Scottish Water to protect human health

21.—(1) Subject to paragraph (3), where an investigation under regulation 17(1) establishes that the failure in question is on-going and constitutes a potential danger to human health, Scottish Water must take such action as is necessary to protect human health from that danger (such as isolating anything that appears to be affecting, or may affect, the quality of the water).

(2) Scottish Water must decide what action should be taken to comply with paragraph (1), bearing in mind the risks to human health which would be caused by an interruption of the supply or a restriction in the use of water intended for human consumption.

(3) Where the investigation establishes that the failure is due to a domestic distribution system in premises where water is supplied to the public (or to the maintenance of that system), paragraph (1) does not apply in so far as a local authority must, under section 76FB of the 1980 Act, require the person who owns or is otherwise responsible for that system to take any such action as is required by that paragraph.

(1) 1980 c.45; section 76FB was inserted by S.S.I. 2010/95 and is amended by regulation 48 of these Regulations.

(4) Scottish Water must inform (in so far as it has not already done so) those of its consumers who are likely to be affected by the failure of any action taken under paragraph (1).

Powers to require further action by Scottish Water

22.—(1) Where—

- (a) an investigation under regulation 17(1) establishes that the failure in question is due to a failure to satisfy the prescribed concentration or value for a parameter in Table B; and
- (b) the Drinking Water Quality Regulator for Scotland considers that the failure in respect of that parameter is not trivial and is likely to recur,

the Regulator may, by notice given to Scottish Water, require it to apply for a departure in accordance with regulation 24(1).

(2) Where the Drinking Water Quality Regulator for Scotland considers that a failure to which a report under regulation 19(1) relates is not trivial, it may by notice given to Scottish Water require Scottish Water to take such action as the Regulator may specify in the notice to—

- (a) restore, as soon as possible, the quality of the water in question so that it satisfies the requirements of regulation 4(2);
- (b) protect human health until the quality of the water is restored; and
- (c) minimise the risk of the water failing to satisfy any such requirement.

(3) Scottish Water must comply with a notice given to it under paragraph (1) or (2).

(4) The exercise by the Drinking Water Quality Regulator for Scotland of the power conferred by paragraph (2) does not preclude the exercise by the Regulator, in relation to the same circumstances, of powers conferred by Part 2 of the Water Industry (Scotland) Act 2002(2).

Power to direct local authorities in relation to domestic distribution systems

23.—(1) Where Scottish Water—

- (a) investigates a failure or apprehended failure for the purposes of regulation 17(1); and
- (b) that investigation establishes that the failure is due to a domestic distribution system in premises where water is supplied to the public (or to the maintenance of that system),

the Scottish Ministers may give directions to a local authority for the area in which the premises is located in relation to the exercise of its functions under sections 76FB and 76FC of the 1980 Act.

(2) A direction under paragraph (1) may, in particular, specify—

- (a) any advice which the local authority must require to be given to consumers in relation to the failure by notice under section 76FB(3)(d) of that Act;
- (b) any steps which the local authority must require to be taken under section 76FB(3)(b) and (e) of that Act; and
- (c) the period which the local authority must specify under section 76FB(3)(c) of that Act.

(3) A local authority must comply with a direction given under paragraph (1) above.