

POLICY NOTE

THE PUBLIC WATER SUPPLIES (SCOTLAND) REGULATIONS 2014

S.S.I. 2014/XXX

These Regulations are made in exercise of the powers conferred by sections 76A(3)(b), 76B, 76F(5) and (6), 76J, 101(1) and (1A) and 109(1) of the Water (Scotland) Act 1980, section 56(1) and (2) of the Finance Act 1973, and section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972. They are subject to the affirmative procedure.

Policy Objectives

1. These 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 revoke and re-enact (with some changes) the Water Supply (Water Quality) (Scotland) Regulations 2001 (“the 2001 Regulations”).
2. In so far as these Regulations apply to water supplied by Scottish Water for human consumption purposes, they also implement the measures necessary to deliver the requirements of Council Directive 98/83/EC on the quality of water intended for human consumption (“the Drinking Water Directive”).
3. Regulation 1(4) is new and ensures that the Regulations do not apply to recognised natural mineral waters and medicinal products which are subject to alternative regulatory regimes. It also provides certain exemptions in relation to water used for the purposes of washing crops, water used during the distillation of spirits and the production of food where the water quality has no impact on the final form.
4. Regulation 16 is new and imposes additional requirements on Scottish Water to identify and monitor of drinking water abstraction points, along with powers for Ministers to require further action to be taken by Scottish Water. This regulation supplements measures which deliver the requirements of Article 7(1) and (2) of Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy (“the Water Framework Directive”).
5. Part 6 broadly re-enacts (with modifications and additions) regulations 17 to 19 of the 2001 Regulations. In particular, Part 6 now requires Scottish Water (rather than the local authority) to investigate the cause of any failure to satisfy a drinking water standard which is due to domestic pipework / system connected to the public water supply. If the domestic distribution system is in premises where water is supplied to the public, then Scottish Water must also report its findings, and the corrective action required, to the local authority. By virtue of amendments made by regulation 48(d) to section 76B of the Water (Scotland) Act 1980, on receipt of any such report, the local authority must serve a notice requiring the person responsible for that system to take corrective action.
6. Regulations 30 and 31 are new and impose additional requirements on Scottish Water to assess, record and report whether there is any significant risk of it supplying unwholesome water from any of its treatment works (and connected supply system). They also enable the Scottish Ministers to require Scottish Water to take remedial action.

7. Regulation 35(1)(a) and (b) and (2) is new and makes it an offence for Scottish Water to contravene regulation 29(1) or a notice given to it under regulation 31(3)(d), subject to a defence that it took all reasonable steps and exercised all due diligence to avoid doing so.

8. Regulations 40 to 45 are new. These confer some incidental powers on Scottish Water, provide for an offence of obstruction, and make related provision for compensation.

Consultation

9. There was a public consultation that ran for 6 weeks, we encouraged all stakeholders involved to comment on the proposed amendments to the draft regulations. Scottish Water were sent a copy of the Consultation and draft regulations prior to publication date, this allowed for further discussions on the draft regulations and any further amendments prior to formal consultation. Responses to the consultation draft were all favourable, so no major changes were required.

10. The Regulations also contain provisions which constitute a “technical regulation” within the meaning of Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations. They were also therefore notified in draft to the European Commission in accordance with that Directive.

Impact Assessment

11. No business and regulatory impact assessment has been prepared for these Regulations as no additional impact upon business, charities or voluntary bodies is foreseen. This is because the Regulations largely revoke and re-enact existing requirements and the new requirements imposed by regulations 16, 30 and 31 broadly reflect existing practice.

12. It is believed that there will be no impact on equal opportunities or human rights.

Financial Effects

13. The Regulations are not expected to have any significant financial effect as the costs will be broadly equivalent to those which applied under the 2001 Regulations. The requirements imposed by regulations 30 and 31 to carry out risk assessments is already required by Directions given to Scottish Water.

14. The new requirement in Part 6 for Scottish Water (rather than local authorities) to investigate and report on failures due to domestic distribution systems which are supplied with water by Scottish Water is not expected to have a significant cost as the number of such failures in any year is expected to be low.

Scottish Government
October 2014