
SCOTTISH STATUTORY INSTRUMENTS

2001 No. 207

The Water Supply (Water Quality) (Scotland) Regulations 2001

PART VI

**INVESTIGATIONS, AUTHORISATION OF
DEPARTURES AND REMEDIAL ACTION**

Investigations: Schedule 1 parameters

17.—(1) Subject to paragraph (3), where a water authority has reason to believe that water supplied by it for regulation 4(1) purposes—

- (a) fails, or is likely to fail, to satisfy a requirement of paragraph (2) of regulation 4; or
- (b) is to be regarded as unwholesome by virtue of paragraph (4) of that regulation; or
- (c) if paragraph (6) of that regulation were ignored, would be regarded as unwholesome by virtue of paragraph (5) of that regulation,

the water authority shall immediately take such steps as are necessary to identify the matters specified in paragraph (2) below.

(2) The matters referred to in paragraph (1) are—

- (a) the cause and extent of the failure, or as the case may be, the apprehended failure;
- (b) the Schedule 1 parameters in respect of which the prescribed concentration or value has not been, or is unlikely to be, achieved; and
- (c) in relation to each parameter so identified, whether the failure, or apprehended failure, to achieve the prescribed concentration or value is attributable—
 - (i) to the domestic distribution system;
 - (ii) to the maintenance of that system; or
 - (iii) to neither of those matters.

(3) Where a departure has been authorised under Part VI—

- (a) paragraph (1) shall apply only in respect of the Schedule 1 parameters (if any) that are not specified in the authorisation; and
- (b) a water authority which has reason to believe that water supplied by it for regulation 4(1) purposes fails, or is likely to fail, to satisfy the concentration or value required by the authorisation in relation to any Schedule 1 parameter, shall immediately take such steps as are necessary to identify the matters specified in paragraph (4).

(4) The matters referred to in paragraph (3) are—

- (a) the cause and extent of the failure or, as the case may be, the apprehended failure;
- (b) the Schedule 1 parameters in respect of which the required concentration or value has not been, or is unlikely to be, achieved; and

- (c) in relation to each parameter so identified, whether the failure, or apprehended failure, to achieve that concentration or value is attributable—
 - (i) to the domestic distribution system;
 - (ii) to the maintenance of that system; or
 - (iii) to neither of those matters.
- (5) As soon as may be after the matters specified in paragraph (2) or (4), as the case may be, have been identified, the water authority shall notify the Scottish Ministers—
 - (a) of those matters;
 - (b) in relation to each parameter identified in accordance with paragraph (2)(b) or (4)(b), whether it is the opinion of the water authority that a failure in respect of that parameter is likely to recur; and
 - (c) of the action (if any) taken by the water authority in relation to a failure which is attributable to the domestic distribution system or the maintenance of that system.
- (6) Where the water authority has identified a failure attributable to the domestic distribution system or to the maintenance of that system, it shall, at the same time as notice is given under paragraph (5)—
 - (a) by notice in writing (or in electronic form) to those of its consumers—
 - (i) to whom it supplies water for regulation 4(1) purposes; and
 - (ii) who are likely to be affected by the failure,
 inform them of the nature of the failure and provide details of the steps (if any) that, in the opinion of the water authority, it is necessary or desirable for those consumers to take in the interests of their health; and
 - (b) send a copy of that notice to the Scottish Ministers and to each appropriate local authority.
- (7) A water authority which has complied with the requirements of paragraph (5) and (6) need not, in respect of the same failure or apprehended failure, comply with the requirements of regulation 31(9).
- (8) Where such a failure as is mentioned in paragraph (6) affects the supply of water to the public in premises in which water is so supplied, the water authority shall, as soon as may be, notify such persons as the Scottish Ministers may from time to time determine for the purposes of this paragraph of the matters of which notice is given to consumers in accordance with paragraph (6)(a).
- (9) Where such a failure as is mentioned in paragraph (1) relates to the copper or lead parameter, the water authority shall, as soon as reasonably practicable after the occurrence, modify or replace such of its pipes and their 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 the presence of copper or lead in those pipes contributed to the failure).

Investigations: Schedule 2 indicator parameters

- 18.—**(1) Where a water authority has reason to believe that water supplied by it for regulation 4(1) purposes does not meet the specifications for indicator parameters set out in Schedule 2, it shall take such steps as are necessary to identify—
- (a) the reason why the specifications are not met;
 - (b) the indicator parameters in respect of which the specifications are not met; and
 - (c) if the specification for the coliform bacteria or colony count parameter (items 4 and 5 in Schedule 2) is not met, whether the inability to meet that specification is attributable—
 - (i) to the domestic distribution system;

- (ii) to the maintenance of that system; or
- (iii) to neither of those matters.

(2) As soon as may be after the matters specified in paragraph (1) have been identified, the water authority shall notify the Scottish Ministers—

- (a) of those matters; and
- (b) in relation to each parameter identified in accordance with paragraph (1)(b), whether it is the opinion of the water authority that a recurrence of the inability to meet the specification in respect of that parameter is likely.

(3) Where, in a case to which paragraph (1)(c) applies, the inability to meet the specification has been identified as attributable to the domestic distribution system or to the maintenance of that system, the water authority shall, at the same time as notice is given under paragraph (2)—

- (a) notify in writing (or in electronic form) those of its consumers—
 - (i) to whom it supplies water for regulation 4(1) purposes; and
 - (ii) who are likely to be affected,

of the nature of the problem and provide details of the steps (if any) that, in the opinion of the water authority, it is necessary or desirable for those consumers to take in the interests of their health; and

- (b) send a copy of the notice to the Scottish Ministers and to each appropriate local authority.

(4) Where such an inability as is mentioned in paragraph (3) is, in the opinion of the water authority, likely to affect the supply of water to the public in premises in which water is so supplied, it shall, at the same time as notice is given under paragraph (2), notify such persons as the Scottish Ministers may from time to time determine for the purposes of this paragraph of the matters of which notice is given to consumers in accordance with paragraph (3)(a).

Action by the Scottish Ministers

19.—(1) Where—

- (a) a notification given in accordance with paragraph (5) of regulation 17 in the circumstances mentioned in paragraph (1) of that regulation (including that paragraph as read with paragraph (3)(a) of that regulation)—
 - (i) discloses a failure in respect of a parameter specified in Part II of Table A or in Table B in Schedule 1; and
 - (ii) that the failure is not attributable to the domestic distribution system or the maintenance of that system; and
- (b) it appears to the Scottish Ministers that the failure in respect of that parameter is not trivial and is likely to recur,

the Scottish Ministers may, by notice in writing (or in electronic form) to the water authority, require that authority to seek a departure in accordance with regulation 20.

(2) The exercise by the Scottish Ministers of the power conferred by paragraph (1) shall not preclude the exercise by them, in relation to the same circumstances, of the power conferred by section 76E of the Act.

(3) Where—

- (a) a notification given in accordance with paragraph (5) of regulation 17 in the circumstances mentioned in paragraph (3)(b) of that regulation discloses—
 - (i) a failure in relation to any parameter specified in Part II of Table A or in Table B in Schedule 1; and

- (ii) that the failure is not attributable to the domestic distribution system or the maintenance of that system; and
- (b) it appears to the Scottish Ministers that the failure in respect of that parameter is not trivial and is likely to recur,

the Scottish Ministers shall consider whether the terms of the authorisation under regulation 20 should be modified.

(4) Where—

- (a) a notification given in accordance with regulation 18(2) discloses an inability to meet the specification applicable to an indicator parameter; and
- (b) the Scottish Ministers consider that the inability is likely to pose a risk to human health,

they may, by notice in writing (or in electronic form) to the water authority, require the water authority to take such steps as may be determined by them and specified in the notice.

(5) It shall be the duty of a water authority to which a notice under paragraph (4) has been given to take the steps specified in the notice.

Authorisation of temporary supply of water that is not wholesome

20.—(1) Subject to paragraph (2), the Scottish Ministers may, upon the written application of a water authority (or in electronic form acceptable to them), authorise in accordance with regulation 21 a departure from the provisions of Part III of these Regulations in so far as they relate to—

- (a) a parameter specified in Part II of Table A in Schedule 1 or in Table B in Schedule 1; and
- (b) the supply of water by that authority in any of its water supply zones.

(2) The Scottish Ministers shall not authorise a departure under paragraph (1) unless they are satisfied—

- (a) that the authorisation is necessary to maintain in that zone a supply of water for regulation 4(1) purposes;
- (b) that a supply of water for those purposes cannot be maintained in that zone by any other reasonable means; and
- (c) that the supply of water in accordance with the authorisation does not constitute a potential danger to human health.

(3) A water authority shall provide with its application—

- (a) a statement—
 - (i) of the grounds on which the authorisation is sought;
 - (ii) of the water supply zone in respect of which the authorisation is sought;
 - (iii) of the parameters in respect of which the prescribed concentration or value cannot be met;
 - (iv) in respect of each parameter to which paragraph (iii) applies, of the results of the analysis of the samples taken in the water supply zone in question during the 12 months immediately preceding the first day on which the prescribed concentration or value could not be met;
 - (v) in respect of each parameter to which paragraph (iii) applies, of the results of the analysis of the samples (if any) taken in the water supply zone in question between the first day on which the prescribed concentration or value could not be met and the date of the application;

- (vi) of the average daily quantity of water supplied to that zone or, if that quantity cannot readily be ascertained, of the average daily quantity of water supplied from the treatment works that supplies water to that zone;
 - (vii) of the estimated population of that zone;
 - (viii) as to whether, if a departure were authorised in the terms sought, any relevant food-production undertaking would be affected;
 - (ix) of the period for which the authorisation is sought; and
 - (x) of the reasons why the supply cannot be maintained by other reasonable means;
- (b) a scheme for monitoring the quality of water supplied in the zone during the period for which the authorisation is sought; and
- (c) a summary of the steps that it proposes to take in order to secure that the supply fully satisfies the requirements of Part III, including—
- (i) a timetable for the work;
 - (ii) an estimate of the cost of the work; and
 - (iii) provisions for reviewing the progress of the work and for reporting the result of the review to the Scottish Ministers.
- (4) At the same time as it makes an application for an authorisation under paragraph (1), the water authority shall serve on—
- (a) every appropriate local authority;
 - (b) every appropriate health board; and
 - (c) the Water Industry Commissioner for Scotland⁽¹⁾,
- a copy of the application and of the statement, scheme and summary referred to in paragraph (3).
- (5) A body on whom documents have been served in accordance with paragraph (4) may make representations to the Scottish Ministers in connection with the application; and any such representations shall be made not later than the end of the period of 30 days beginning with the date on which the application for the authorisation is made.

Authorisations: terms and conditions

21.—(1) Subject to paragraph (2), a departure may be authorised under regulation 20 for such period as is in the Scottish Ministers' opinion reasonably required for securing a supply of water for regulation 4(1) purposes that fully satisfies the requirements of Part III (“the departure period”).

(2) No departure period shall exceed three years.

(3) Subject to paragraph (4), an authorisation under regulation 20—

- (a) shall specify—
 - (i) the grounds on which it is granted;
 - (ii) every water supply zone in respect of which it is granted;
 - (iii) the extent to which a departure from the prescribed concentration or value of any parameter is authorised;
 - (iv) in respect of each parameter to which paragraph (iii) applies, the results of the analysis of the samples taken in the water supply zone in question during the 12 months immediately preceding the first day on which the prescribed concentration or value could not be met;

(1) The Water Industry Commissioner was established by virtue of section 67A of the Local Government etc. (Scotland) Act 1994 c. 39.

- (v) in respect of each parameter to which paragraph (iii) applies, the results of the analysis of the samples (if any) taken in each water supply zone in question between the first day on which the prescribed concentration or value could not be met and the date of the application;
 - (vi) the average daily quantity of water supplied from each of those zones or, if that quantity cannot readily be ascertained, the average daily quantity of water supplied from the treatment works that supplies water to that zone;
 - (vii) the estimated population of each of those zones;
 - (viii) whether or not any relevant food-production undertaking would be affected; and
 - (ix) the departure period; and
- (b) shall require the implementation of a scheme for monitoring the quality of water supplied in each of those zones during the departure period (which may be, but need not be, the scheme submitted in accordance with regulation 20(3)(b)); and
- (c) shall require the carrying out of the steps which, in their opinion, are reasonably required in order to secure that the supply fully satisfies the requirements of Part III (whether or not the steps are those proposed in the summary submitted in accordance with regulation 20(3)(c)); and
- (d) shall specify, in relation to those steps—
- (i) the timetable for the work;
 - (ii) an estimate of the cost of the work; and
 - (iii) provisions for reviewing the progress of the work and for reporting to them the result of the review; and
- (e) require the taking of such steps as may be specified to give to the population within the water supply zones to which the authorisation applies and, in particular, to those groups of that population for which the supply of water in accordance with the authorisation could present a special risk, advice as to the measures (if any) that it would be advisable in the interests of their health for persons within that population or those groups to take for the whole or any part of the departure period.
- (4) Where the Scottish Ministers are of the opinion—
- (a) that the extent of the contravention of the requirements of Part III as respects any parameter is trivial; and
 - (b) that the prescribed concentration or value as respects that parameter is likely to be achieved within the period of 30 days beginning with the day on which the prescribed concentration or value in respect of that parameter was contravened,
- the particulars to be specified in the authorisation shall be those required by paragraph (3)(a) (iii) and (ix), and sub-paragraphs (b) to (e) of that paragraph shall not apply.
- (5) Where it appears to the Scottish Ministers that a supply of water that fully satisfies the requirements of Part III cannot be restored by the end of the departure period, they may authorise a further departure.
- (6) Paragraphs (1) to (4) shall apply to a further departure as they apply to a departure authorised under regulation 20.
- (7) Where it appears to the Scottish Ministers that a supply of water that fully satisfies the requirements of Part III cannot be restored by the end of the departure period relevant to an authorisation under paragraph (5), they may, in accordance with Article 9(2) of Council Directive [98/83/EC\(2\)](#), authorise a third departure.

(2) O.J. No. L 330, 5.12.98.

(8) Paragraph (3) shall apply to any departure authorised under paragraph (7) as it applies to a departure authorised under regulation 20, but with the substitution for the words “Subject to paragraph (4)” of the words “Subject to any decision of the Commission”.

Authorisations: other limitations

- 22.** An authorisation under regulation 20 or regulation 21 may be limited to water supplied—
- (a) from particular sources or classes of source;
 - (b) to particular water supply zones or to zones of particular descriptions.

Publicity for authorisations

- 23.** As soon as reasonably practicable after a departure has been authorised, the water authority shall—
- (a) inform the population affected of the departure and of the conditions governing it—
 - (i) except in a case to which paragraph (4) of regulation 21 applies, a notice containing a statement of the matters specified in paragraph (3)(a)(ii), (iii), (viii) and (ix) of that regulation;
 - (ii) in a case to which paragraph (4) of regulation 21 applies, and if Scottish Ministers so require, a notice containing a statement of the matters specified in paragraph (3)(a)(ii), (iii) and (ix) of that regulation;
 - (b) give such other public notice of the authorisation and of its terms and conditions as the Scottish Ministers may, by notice in writing (or in electronic form) to the water authority, reasonably require.

Revocation and modification of authorisations

24.—(1) Subject to paragraphs (2) and (3), the Scottish Ministers may at any time modify or revoke an authorisation under regulation 20; and regulations 21 and 22 shall apply as respects a modification as they apply as respects an authorisation.

(2) The Scottish Ministers shall not revoke or modify an authorisation under regulation 20 without giving at least six months' notice in writing (or in electronic form) of their intention to do so to—

- (a) the water authority to which the authorisation relates;
- (b) every appropriate local authority;
- (c) every appropriate health board; and
- (d) the Water Industry Commissioner for Scotland,

but they may revoke or modify an authorisation without notice if it appears to them that immediate revocation or modification is required in the interests of public health.

(3) A water authority on whose application a departure has been authorised under this Part shall notify the Scottish Ministers as soon as the circumstances which gave rise to the application cease to exist; and the Scottish Ministers shall thereupon revoke the authorisation without the need for prior notice.