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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

<sup>M1M2</sup>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. In so far as they apply to water supplied by Scottish Water for human consumption purposes, they also apply the measures necessary to deliver the requirements of Council Directive 98/83/EC on the quality of water intended for human consumption (“the Directive”). Regulation 16 also 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”).

<sup>M3M4</sup>Except for regulations 16, 17 to 22 (in part), 23, 29(3) to (5), 30, 31, 33(12), 35(1)(a) and (b) and (2) (read with 35(4)), 36, 40 to 45, 46(2) and 48 to 52, the provisions of these Regulations revoke and re-enact (with some modifications) provisions of the Water Supply (Water Quality) (Scotland) Regulations 2001 (“the 2001 Regulations”). Except where the contrary intention appears, in so far as a thing done (such as a sample taken or a failure investigated) or having effect as if so done under a provision of the 2001 Regulations could have been done under the re-enacted provision (modified or not), that thing has effect as if done under that re-enacted provision.

Part 1 makes provision for citation, commencement, extent, application and interpretation.

Part 2 requires Scottish Water to designate areas of its supply as ‘water supply zones’.

Part 3 sets the standards of wholesomeness required for water supplied by Scottish Water.

Part 4 requires Scottish Water to take samples of water to check compliance with the standards of wholesomeness required. Samples taken from consumers' taps must be selected at random.

Part 5 requires Scottish Water to identify its drinking water abstraction points and to take samples in order to check compliance with treatment standards and for risk assessment purposes.

Part 6 requires Scottish Water to immediately investigate any failure, or apprehended failure, to satisfy the standards of wholesomeness required. Scottish Water must immediately notify its consumers and other persons of any potential danger to human health. Scottish Water must report its findings. Where the failure affects water supplies to the public and the cause is due to a domestic distribution system in premises where water is supplied to the public, the Scottish Ministers may direct the relevant local authority in relation to the exercise of its powers to take remedial action under the Water (Scotland) Act 1980. In other cases, Scottish Water must take remedial action to restore a wholesome supply and to protect human health.

Part 7 provides for the authorisation of temporary departures from the wholesomeness standards.

Part 8 requires Scottish Water to treat and disinfect its water supplies to render harmless any contaminants. It also requires Scottish Water to assess each of its treatment works and connected supply systems to establish if there is any significant risk of it supplying unwholesome water. The Scottish Ministers may require Scottish Water to take steps to mitigate any such risk. Scottish Water must also treat its water to minimise any risk of copper and lead standards being exceeded.

Part 9 provides controls in relation to the application and introduction of substances, products and processes in relation to water supplied by Scottish Water for human consumption purposes.

Part 10 makes it an offence to contravene some of the provisions in Parts 8 and 9.

Part 11 makes provision in relation to records, health risk events and disclosure of information.

Part 12 makes provision in relation to incidental powers of entry for Scottish Water, and makes connected provision for an offence of obstruction and compensation for damage.

Part 13 makes provision in relation to the enforcement powers of the Scottish Ministers. In particular, regulation 46(2) ensures that a duty or requirement which is not imposed (in whole or part) in exercise of powers under section 76B of the Water (Scotland) Act 1980 may be

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enforced by means of a default order under section 11(2) of that Act in the same way as a duty or requirement imposed in exercise of powers under section 76B of that Act.

Part 14 confers incidental functions on local authorities. Part 15 makes consequential amendments and revocations. Part 16 makes transitional provisions.

The powers in section 2(2) of the European Communities Act 1972 (c. 68) (“the 1972 Act”) are exercised so far as may be necessary (to supplement the other powers cited) for the purposes of implementing, or enabling the implementation of, obligations arising under or by virtue of the Directive or Article 7(1) and (2) of the Water Framework Directive, and for the purposes of dealing with matters arising out of or related to any such obligations.

In particular, the powers in section 2(2) of the 1972 Act enable provision to be made in—

- regulation 8 for the authorisation of samples (pursuant to Article 7(3) of the Directive),
- regulation 16(3), (4) and (5)(b) in connection with monitoring of drinking water abstraction points (pursuant to Article 7(1) and (2) of the Water Framework Directive),
- regulations 17 to 23 for the investigation and taking of action in relation to failures due to domestic distribution systems (pursuant to Articles 4 and 8 of the Directive),
- regulation 31(3) for the conferral of a power on the Scottish Ministers to, by notice, require Scottish Water to take certain steps where a report identifies a significant risk of supplying unwholesome water (pursuant to Articles 4 and 8 of the Directive),
- regulation 35(1)(a) and (b) and (2) (as read with regulation 35(4) and 36) which 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 (pursuant to Articles 4 and 8 of the Directive),
- regulations 40 to 45 for the conferral of incidental powers, the offence of obstruction and provision in relation to compensation (pursuant to Articles 4 to 10 of the Directive),
- regulation 46(2) for the conferral of an enforcement power in relation to a duty or requirement imposed by virtue of Parts 4 to 11 for a purpose not specified in section 76B of the Water (Scotland) Act 1980 (pursuant to Articles 4 to 10 of the Directive),
- regulations 48 and 49 for the purposes of making amendments to the Water (Scotland) Act 1980 and the Building (Scotland) Act 2003 in consequence of regulations 17 to 23 (in so far as those regulations are made pursuant to Articles 4 and 8 of the Directive), and
- <sup>M5</sup>— regulation 50 for the purposes of revoking the Surface Waters (Abstraction for Drinking Water) (Classification) (Scotland) Regulations 1996 in consequence of the repeal (by Article 22(1) of the Directive [2000/60/EC](#) establishing a framework for Community Action in the field of water policy ) of Council Directive [75/440/EEC](#) (OJ L 194, 25.7.1975, p. 26) and Council Directive [79/869/EEC](#) (OJ L 271, 29.10.1979, p. 44).

<sup>M6</sup>A draft of these Regulations was communicated to the European Commission in accordance with Directive [98/34/EC](#) laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services on the basis that Part 9 contains provisions which constitute ‘technical regulation’ under that Directive.

No business and regulatory impact assessment has been prepared for these Regulations as no additional impact upon business, charities or voluntary bodies is foreseen.

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