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SCOTTISH STATUTORY INSTRUMENTS

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**2014 No. 364**

**The Public Water Supplies (Scotland) Regulations 2014**

**PART 7**

**AUTHORISATION OF TEMPORARY DEPARTURES**

**Authorisation of temporary supply of water that is not wholesome**

**24.**—(1) Subject to paragraph (2), the Scottish Ministers may, on the application of Scottish Water in writing (or in electronic form) and in accordance with regulation 25, authorise a departure from a requirement of Part 3 in so far as the requirement relates to both—

- (a) a parameter in Table B; and
- (b) a supply of water by Scottish Water within a water supply zone.

(2) The Scottish Ministers must 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 human consumption 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) Scottish Water must 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 head (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 head (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 satisfies the requirements of Part 3, 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), Scottish Water must give to—
  - (a) every appropriate health board;
  - (b) every appropriate local authority;
  - (c) the Scottish Association of Citizens Advice Bureaux<sup>(1)</sup>; and
  - (d) the Water Industry Commissioner for Scotland,
 a copy of the application and of the statement, scheme and summary referred to in paragraph (3).
- (5) A body to whom documents have been given in accordance with paragraph (4) may make representations to the Scottish Ministers in connection with the application; and any such representations must 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.
- (6) In paragraph (4)—
  - “appropriate health board” means a health board whose area contains any part of the water supply zone to which the authorisation being sought would relate; and
  - “appropriate local authority” means a local authority whose area contains any part of the water supply zone to which the authorisation being sought would relate.

#### **Authorisations: terms and conditions**

- 25.**—(1) Subject to paragraph (2), a departure authorised under regulation 24(1) must be for as short a period as the Scottish Ministers consider is reasonably required for securing a supply of water for human consumption purposes that satisfies the requirements of Part 3 (“the departure period”).
- (2) A departure period must not exceed 3 years.
  - (3) Subject to paragraph (4), an authorisation under regulation 24(1) must—
    - (a) 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;

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(1) The Scottish Association of Citizens Advice Bureaux is a company limited by guarantee, formed and registered under the Companies Act 2006 with the company number SC089892, and a registered charity with the number SC016637.

- (iv) in respect of each parameter to which head (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;
  - (v) in respect of each parameter to which head (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;
- (b) 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 24(3)(b));
  - (c) require the carrying out of the steps which the Scottish Ministers consider are reasonably required in order to secure that the supply satisfies the requirements of Part 3 (whether or not the steps are those proposed in the summary submitted in accordance with regulation 24(3)(c));
  - (d) 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 the Scottish Ministers 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 consider that—
    - (a) the failure to comply with a requirement of Part 3 as respects any parameter is trivial; and
    - (b) the parameter in question is likely to comply with the prescribed concentration or value for that parameter within the period of 30 days beginning with the day on which the parameter failed to comply with that prescribed concentration or value,the particulars to be specified in the authorisation are those required by paragraph (3)(a)(iii) and (ix), and paragraph (3)(b) to (e) does not apply.
- (5) Where it appears to the Scottish Ministers that a supply of water that satisfies the requirements of Part 3 cannot be restored by the end of the departure period authorised under regulation 24(1) (“first departure”), they may authorise a second departure.
  - (6) Paragraphs (1) to (4) and (9) apply to a second departure as they apply to a first departure.
  - (7) Where it appears to the Scottish Ministers that a supply of water that satisfies the requirements of Part 3 cannot be restored by the end of the second departure period, they may request the European

Commission to grant a third departure (for a period not exceeding 3 years) in accordance with Article 9(2) of the Directive.

(8) Where the European Commission grants a third departure (“derogation”), the Scottish Ministers must send a copy of the derogation to—

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

(9) Paragraph (4) does not apply if the failure to comply with a prescribed concentration or value has occurred on more than 30 days on aggregate during the previous 12 months.

#### **Authorisations: other limitations**

**26.** An authorisation under regulation 24(1) or 25(5), or a request under regulation 25(7), may be limited to water supplied—

- (a) from particular sources or classes of source; and
- (b) to particular water supply zones or to zones of particular descriptions.

#### **Authorisations: publicity**

**27.** As soon as reasonably practicable after a departure has been authorised under regulation 24(1) or 25(5) or granted in accordance with Article 9(2) of the Directive, Scottish Water must—

- (a) inform those of its consumers who are likely to be affected by the departure (or the conditions governing it)—
  - (i) except in a case to which regulation 25(4) applies, of the departure and the conditions governing it (including the matters specified in regulation 25(3)(a)(ii), (iii), (viii) and (ix)); or
  - (ii) in a case to which regulation 25(4) applies, and if Scottish Ministers so require, of the departure and the conditions governing it (including the matters specified in regulation 25(3)(a)(ii), (iii) and (ix)); and
- (b) give such other public notice of the departure (and the conditions governing it) as the Scottish Ministers may, by notice given to Scottish Water, reasonably require.

#### **Authorisations: revocation and modification**

**28.—(1)** Subject to paragraphs (2) and (3), the Scottish Ministers may at any time modify or revoke an authorisation given (or having effect as if so given) under regulation 24(1) or 25(5), and regulations 25 and 26 apply as respects a modification as they apply as respects that authorisation.

(2) Except where paragraph (4) applies, the Scottish Ministers must not revoke or modify an authorisation under regulation 24(1) or 25(5) without giving at least 6 months’ notice in writing (or in electronic form) of their intention to do so to—

- (a) the Drinking Water Quality Regulator for Scotland;
- (b) every appropriate health board;
- (c) every appropriate local authority;
- (d) the Scottish Association of Citizens Advice Bureaux;
- (e) Scottish Water; and
- (f) the Water Industry Commissioner for Scotland,

but they may revoke or modify any such authorisation without the need for this prior notice if it appears to the Scottish Ministers that immediate revocation or modification is required in the interests of public health and provided notice is given thereafter of the revocation or modification.

(3) Scottish Water, on whose application a departure has been authorised under this Part, must notify the Scottish Ministers as soon as the circumstances which gave rise to the application cease to exist.

(4) The Scottish Ministers must on being notified under paragraph (3)—

(a) by notice given to Scottish Water revoke the authorisation; and

(b) send a copy of the notice to the Drinking Water Quality Regulator for Scotland.

(5) In paragraph (2)—

“appropriate health board” means a health board whose area contains any part of the water supply zone to which the authorisation relates; and

“appropriate local authority” means a local authority whose area contains any part of the water supply zone to which the authorisation relates.