

Business and Regulatory Impact Assessment

Title of Proposal

The Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017 (“the 2017 Regulations”)

Purpose and intended effect

- **Background**

The Private Water Supplies (Scotland) Regulations 2006 (“the existing Regulations”) implement the Directive 98/83/EC (“the Drinking Water Directive”) and Directive 2013/51/Euratom in so far as it applies to private water supplies.

Some changes were made to the Drinking Water Directive by Directive (EU) 2015/1787. These changes need to be implemented by 27 October 2017.

- **Objective**

To implement afresh, for large private water supplies (known as “Type A” supplies under the existing Regulations), the Drinking Water Directive and Directive 2013/51/Euratom by replacing the existing Regulations (in so far as they apply to those supplies), with the 2017 Regulations. The provisions of the 2017 Regulations are therefore intended to implement:

- Directive 98/83/EC on the quality of water intended for human consumption (“the Drinking Water Directive”),
- Directive (EU) 2015/1787 amending Annexes II and III to the Drinking Water Directive (“the Amending Directive”), and
- Directive 2013/51/Euratom laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption (“the Euratom Directive”).

It is proposed that, for small private water supplies (known as “Type B” supplies under the existing Regulations), a separate set of regulations will update, and possibly replace, the existing Regulations.

The Amending Directive revises and replaces Annexes II and III to the Drinking Water Directive, which lay down the minimum requirements of the monitoring programmes for all water intended for human consumption and the specifications for analysis of different parameters. The specifications in the annexes require to be updated in the light of scientific and technical progress and to be consistent with other EU legislation. The Amending Directive is required to be transposed into domestic legislation by 27 October 2017.

Annex II has been amended to align to the latest updates to the World Health Organisation's water safety plan approach based on risk assessment and risk management principles laid down in the WHO Guidelines for Drinking Water Quality. Experience has shown that, for many (particularly physico-chemical) parameters in drinking water, the concentrations present would rarely result in any breach of limit values. Monitoring and reporting such parameters without practical relevance imply significant costs, especially where a large number of parameters need to be considered. Introducing flexible monitoring frequencies under such circumstances presents potential cost-saving opportunities that would not damage public health or other benefits. Flexible monitoring also reduces the collection of data that provide little or no information on the quality of the drinking water. The amendments to Annex II allow Member States to derogate from the monitoring programmes they have established, provided credible risk assessments are performed, which may be based on the WHO Guidelines and should take into account the monitoring carried out under Article 8 of Directive 2000/60/EC ("the Water Framework Directive").

Annex III has been amended to allow laboratories to use the most up-to-date European or equivalent international standards for the analysis of parameters and for the methods of analysis to be validated in accordance with the most recent standards.

- **Rationale for Government intervention**

The Amending Directive requires to be transposed into domestic legislation by 27 October 2017. Private drinking water supplies impact on a number of policy areas, such as health, tourism and the rural economy. The 2017 Regulations contribute to the Healthier strategic objective, as well as the National Outcome that we live longer, healthier lives.

Consultation

- **Within Government**

We have discussed the proposals with colleagues in Defra (Drinking Water Inspectorate) and DAERA (NI).

- **Public Consultation**

We trailed an outline of the proposals at a workshop for local authority environmental health officers in May 2016, sought and discussed suggestions for the regulations at a meeting of the environmental health officers' Private Water Supplies Sub-group in July 2016 and discussed a draft of the proposed regulations at a further meeting with the Sub-group on 10 April 2017. We also discussed the proposals with Citizens Advice Scotland and Scottish Land and Estates. A public consultation on the proposals was undertaken for 12 weeks from 6 May to 28 July 2017.

- **Business**

A number of business representative groups who had a potential interest in the proposals were sent a link to the consultation. These were -

Scottish Land and Estates
National Farmers' Union of Scotland
Scottish Independent Hostels
Association of Scottish Self Caterers
British Holiday and Home Parks Association
Scottish Association of Landlords

We also encouraged local authorities to send the consultation to up to 10 businesses listed on their register of private water supplies.

Options

Option 1 – Do nothing

This option runs the risk of infraction proceedings or a fine by the EU as the Amending Directive will not be transposed.

Option 2 – Transpose Amending Directive by amending existing Regulations

The existing Regulations have been amended a number of times and contain a complex mix of EU and domestic requirements made under different powers.

Option 3 – Transpose Amending Directive by replacing the existing Regulations (so far as they apply to large private water supplies) with a fresh set of Regulations

This provides an opportunity to replace the existing Regulations with provisions that are easier to follow and which include additional powers and tools to make it easier for local authorities to ensure that the water quality standards are achieved.

Option 4 – Implement Amending Directive by non-regulatory means e.g. guidance for local authorities

This would not be sufficient to transpose the provisions of the Directives into UK law.

Sectors and groups affected

Owners, other relevant persons and users of large private water supplies (i.e. those supplies that provide 10m³ of water a day or more or serve 50 or more persons) and those in relation to water supplied as part of a commercial or public activity. There are estimated to be 2,400 private water supplies which will be subject to the 2017 Regulations, many of these providing water to visitors to Scotland using hotels, caravans and holiday lets.

Benefits

There would be no identifiable benefits associated with option 1 and option 2 would leave some issues of compliance with the public health provisions of the current regulations unaddressed. Option 3 provides the opportunity to make improvements in the quality of private water supplies through the use of a more robust risk assessment and additional enforcement provisions which will benefit all users including visitors to Scotland.

Costs

Risk assessment

There are additional costs to local authorities under option 3 in terms of phasing in a mandatory risk assessment which is approved by the competent authority for all private water supplies subject to the 2017 Regulations but, as under the existing Regulations, there are provisions for local authorities to recover the cost of undertaking risk assessments from the owner or user of the supply. All large private supplies which are subject to the existing Regulations currently have a risk assessment, but this does not meet the requirements set out in the Amending Directive. To mitigate the impact on local authority resources and on owners and users we are proposing to phase this requirement in over a period of 4 years. We have also relaxed the frequency of risk assessment review from annually to every five years. Current annual overall cost to all owners and users is estimated to be £120,000 for risk assessment review, though the amount recovered by local authorities does not fully cover their costs as the current regulations place a cap on the amount which can be recharged and this has not been reviewed for 11 years. Over the 4 year phasing-in period the additional costs are estimated to be £94,000, an additional annual cost of £23,500. The 2017 Regulations require a risk assessment and then a review after 5 years, therefore when compared against the requirements for current supplies of a review every year, it is likely that the cost for each risk assessment for each supply over ten years will be reduced.

Sampling

There are also some additional costs associated with options 2 and 3 in terms of meeting the evidence base requirements of the revised monitoring programmes introduced by the Amending Directive. There is a requirement for three year's sample results before a parameter can be removed through use of risk assessment from the monitoring programme. The existing Regulations have allowed individual parameters to be removed from monitoring programmes, though the criteria differ significantly from the Amending Directive. This means that the evidence base may not currently be met, though data from the public supplies monitoring programme and any environmental monitoring programmes will be reviewed. It is therefore possible that additional monitoring will be necessary. To mitigate this and the substantial costs that would be incurred by monitoring each supply over 3 years we propose to monitor by supply zones which will be groups of private water supplies. The current annual cost of analysis is estimated to be £232,700. It is anticipated that the annual monitoring costs, will be in the range of £276,000 - £456,000. It is not possible to be more exact until the findings of the research programme into water supply zone designations is complete and the number of zones known.

Scottish Firms Impact Test

As stated above, a number of specific business interests were made aware of the consultation.

Competition Assessment

Using the Competition and Markets Authority Competition Filter Questions we concluded that the proposals would neither directly or indirectly limit the number or range of suppliers, limit the ability of suppliers to compete, or reduce suppliers' incentives to compete vigorously. The proposals included provisions aiming to increase the information available to consumers.

Test run of business forms

The 2017 Regulations will be enforced by local authorities and contain provisions relating to a number of new types of notice and a register of private water supply systems. The 2017 Regulations specify what these should contain, but do not include templates for forms.

Legal Aid Impact Test

The proposals included rights of appeal against notices served under the 2017 Regulations and there may therefore be impacts on the legal aid fund.

Enforcement, sanctions and monitoring

The 2017 Regulations will be enforced by local authorities with oversight provided by the Drinking Water Quality Regulator for Scotland (DWQRS). They contain a number of enforcement provisions including remediation, enforcement and emergency notices and penalties for offences. Water quality monitoring programmes are a key component of the 2017 Regulations as are requirements for regular reporting on water quality.

Implementation and delivery plan

The 2017 Regulations were subject to a 12 week public consultation before making and laying the 2017 Regulations on 5 and 7 September 2017 respectively with a coming into force date of 27 October 2017 to meet the EU transposition deadline. The 2017 Regulations contain provision for regular reporting by local authorities and the DWQR on drinking water quality.

Action taken following consultation

- A provision included in the consultation draft to allow representations to be made against the intention to serve a remediation or enforcement notice was subsequently removed from the 2017 Regulations as local authorities had found similar provisions in other legislation not to be useful and there is in any case a right of appeal against the serving of a notice.
- A drafting change was made, as the use of the term "small supply" to describe supplies exempt from the Regulations was thought to be misleading,

so this term is no longer used.

- The different definitions of “relevant person” were merged into one and additional qualifying factors introduced.
- The information to be recorded in the register of private supplies was reduced and simplified.
- Provisions imposing additional duties on water suppliers were removed in the light of a strong body of opinion that these were potentially too onerous and liable to have unintended adverse consequences on users and consumers of private water supplies.
- The judgment on whether water used in food production can or cannot affect the wholesomeness of the product, and therefore whether or not it is water intended for human consumption, was made the responsibility of the competent authority, that is Food Standards Scotland or the relevant local authority, rather than the Drinking Water Quality Regulator for Scotland.

Post-implementation review

The 2017 Regulations may be reviewed in the light of any further changes to the Drinking Water Directive, on which proposals are likely to be produced before the end of 2017, or otherwise within 10 years.

Summary and recommendation

Option 3 was recommended as there could be sanctions if we fail to transpose the Amending Directive and it is helpful to make use of the opportunity to replace the existing Regulations in relation large private water supplies with a fresh set of regulations which are easier to follow and confer additional enforcement tools to strengthen the public health protection provided.

Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	None	Infraction proceedings or fine
2	Full transposition of EU law	Some additional cost in meeting the evidence base requirements of revised monitoring programmes
3	Full transposition of EU law and improved public health protection	Additional cost in meeting the evidence base requirements as for option 2, additional costs to local authorities and owners and users with mandatory risk assessment for all private water supplies subject to the regulations
4	Implement Amending Directive by non-regulatory means e.g. guidance for local authorities	Would not be sufficient to transpose the provisions of the Directives into UK law and risk infraction proceedings or fine

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date: 5 September 2017

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