

*Draft Regulations laid before Parliament under section 213(1A) of the Water Industry Act 1991 for
approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

2022 No. XXX

WATER INDUSTRY, ENGLAND

**The Water Fluoridation (Consultation)
(England) Regulations 2022**

Made - - - - *****

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 89(1), (2)(b) and (3) and 213(2)(d) and (f) of the Water Industry Act 1991(1).

In accordance with section 213(1A)(2) of the Water Industry Act 1991, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Water Fluoridation (Consultation) (England) Regulations 2022, and come into force on the day after the date on which they are made.

(2) These Regulations extend to England and Wales, but apply in relation to England only.

Interpretation

2. In these Regulations—

“the Act” means the Water Industry Act 1991;

“fluoridation arrangements” means arrangements under section 87(1) of the Act;

“local authority” means a county council, a district council, the Greater London Authority, a London borough council, the Common Council of the City of London (in its capacity as a local authority) or the Council of the Isles of Scilly;

“proposal” means a proposal by the Secretary of State to take any step concerning fluoridation arrangements that falls within section 89(2) of the Act.

(1) 1991 c. 56; section 89 is amended by section 175(5) of the Health and Care Act 2022 (c. 31) (“the 2022 Act”). There are other amendments, but none is relevant to this instrument.

(2) Section 213(1A) was inserted by section 58(8) of the Water Act 2003 (c. 37) and amended by section 37(3) of the Water Act 2014 (c. 21). Section 175(9) of the 2022 Act provides that the reference in section 213(1A) of the Water Industry Act 1991 to the first exercise of the power to make regulations under section 89 of that Act is to be read as a reference to the first exercise of the power to make regulations under that section as amended by section 175(5) of the 2022 Act.

Consultation

3.—(1) In order to consult and ascertain opinion before taking any step concerning fluoridation arrangements that falls within section 89(2) of the Act, the Secretary of State must—

- (a) publish, through such media as the Secretary of State considers appropriate, details of the step the Secretary of State proposes to take and the manner in which persons can make representations regarding the proposal; and
 - (b) give notice of the proposal to every local authority whose area falls wholly or partly within the area to which the arrangements relate and any other person the Secretary of State considers appropriate.
- (2) The details published under paragraph (1)(a) must include—
- (a) the nature of the step the Secretary of State proposes to take;
 - (b) the reasons for the proposal;
 - (c) the area affected by the proposal; and
 - (d) the period, being a period of not less than 12 weeks from the date on which the details are first published, within which representations can be made to the Secretary of State.

Variation proposals for which consultation is required

4. Requesting a water undertaker to vary fluoridation arrangements is a step falling within section 89(2)(b) of the Act if—

- (a) the variation concerns the boundary of the area to which the fluoridation arrangements relate; and
- (b) the number of houses that would be affected by the variation, either by being brought within the area or by being excluded from it, exceeds 20% of the number of houses within the area at the time that the request is made.

Decision-making in relation to a proposal

5.—(1) When deciding whether to take any step concerning fluoridation arrangements that falls within section 89(2) of the Act following a consultation under regulation 3, the Secretary of State must, in particular—

- (a) have regard to any representations made in response to the consultation with a view to assessing—
 - (i) the extent of support for the proposal,
 - (ii) the cogency of any arguments advanced, and
 - (iii) the strength of any scientific evidence or ethical arguments advanced in relation to the proposal;
- (b) consider whether additional weight should be given to representations made by individuals who would be affected by the proposal or by bodies with an interest, or both;
- (c) consider the capital and operating costs which are likely to be incurred in giving effect to such arrangements as are specified in the proposal; and
- (d) consider any other available scientific evidence or data in relation to the proposal, including any evidence or data relating to—
 - (i) the health needs; and
 - (ii) the impact on the health and wellbeing, of individuals who would be affected by the proposal.

(2) The reference in this regulation to individuals affected by the proposal is to individuals who reside or work in the area affected by the proposal.

Revocation

6. The Water Fluoridation (Proposals and Consultation) (England) Regulations 2013(3) are revoked.

Signed by authority of the Secretary of State for Health and Social Care

Address
Date

Name
Parliamentary Under Secretary of State
Department of Health and Social Care

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations elaborate on the consultation requirements provided for in section 89 of the Water Industry Act 1991, where the Secretary of State proposes to enter into, vary or terminate arrangements with a water undertaker to increase the fluoride content of water supplied by the water undertaker.

The Regulations provide for the Secretary of State's proposal to be published in such media as the Secretary of State considers appropriate, for the Secretary of State to give notice of the proposal to every local authority to whose area the proposal relates, and set out the details to be included in such publication (regulation 3). They prescribe the circumstances in which consultation is required in respect of a proposal to vary fluoridation arrangements (regulation 4). They also set out a non-exhaustive list of criteria by which the Secretary of State is to determine whether the Secretary of State should proceed with the proposal (regulation 5).

A full impact assessment has not been prepared for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

An explanatory memorandum has been prepared and is available alongside this instrument on the website, www.legislation.gov.uk.