
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations supplement Part VIA (quality of water) of the Water (Scotland) Act 1980 (“the 1980 Act”) and are directed at the achievement of the objective set out in article 1(2) of Council Directive 98/83/EC (O.J. No. L 330, 5.12.98, p.32) on the quality of water intended for human consumption (“the Directive”), namely, to protect human health from the adverse effects of any contamination of water intended for human consumption, by ensuring that it is wholesome and clean. The Regulations implement the Directive insofar as it concerns private water supplies (within the meaning of regulation 2(1)).

Part I of the Regulations provides for the Regulations to come into force on 3rd July 2006, and defines terms that are used in the Regulations. In particular, regulation 2(1) defines “private water supplies”, which comprise “Type A” and “Type B” supplies.

Part II contains provisions in relation to the determination of a person to be a “relevant person”, and for an appeal to the sheriff against that determination.

Part III excludes certain private water supplies from the application of the Regulations (except regulations 34(2) and 35)

Part IV contains provisions in relation to the classification of private water supplies and for the review of classifications.

Part V prescribes standards of wholesomeness in respect of Type A and Type B supplies for human consumption purposes. A supply is regarded as wholesome if it contains concentrations or values in respect of the properties, parameters, organisms and substances that do not contravene prescribed maxima or minima.

Part VI makes provision further to article 9 of the Directive to exempt Type A supplies from the wholesomeness requirements of Part V in specified circumstances, and for specified periods.

Regulation 8 requires a relevant person to make an application for an authorised departure (from the requirements of Part V) where a Type A supply is believed to fail, or likely to fail, a requirement of regulation 7(2), and specifies the matters to be included in such an application, and who requires to be notified of application. Regulation 9 provides for the application process in relation to authorised departures.

Article 9(1) of the Directive recognises that in certain circumstances it may not be possible to bring a Type A supply up to the wholesomeness standards of Part V by the end of the departure period specified under regulation 9 and regulation 10 makes provision for a second departure period. Article 9(2) of the Directive recognises that in exceptional circumstances, compliance with the requirements of Part V may not be achieved by the end of a second departure period and regulation 11 makes provision in this regard. On being satisfied there are grounds for a third departure, the Scottish Ministers shall seek from the European Commission a decision whether to grant a third departure.

Regulation 13 makes provision in relation to the persons to be notified when a departure is granted and regulation 14 makes provision in relation to the refusal of a departure, and the giving of reasons for such a refusal.

Part VI contains provision in relation to Type A supplies. It requires a monitoring local authority to carry out a risk assessment of every Type A supply in its area, and for the results of such an assessment to inform any remedial action as may be required under regulation 17 or 18. A monitoring local authority is also required to identify whether such supplies meet the requirements of Part V

(or those requirements as read with the terms of any authorisation granted under Part VI). Where those requirements are not met, regulations 17 and 18 require the monitoring local authority to notify the relevant person in relation to the supply and advise of any failure attributable to a domestic distribution system. Where a failure is attributable to a domestic distribution, the responsible person in relation to that system is required to notify consumers of the supply of the steps considered by the authority necessary or desirable to take in the interests of their health. Where a failure affects a supply of water to the public, the responsible person requires to prominently display a notice advising of the steps considered by the authority necessary or desirable for consumers of the supply to take in the interests of their health.

Part VII contains provisions in relation to the monitoring of Type A supplies.

Regulation 21 requires a monitoring local authority to take and analyse the number of samples specified in Tables A and B in Schedule 2 for parameters, organisms and substances. It also makes specific provision for monitoring supplies from tankers.

Regulation 23 provides for the number of samples of Type A supplies which a monitoring local authority requires to take, and specifies the circumstances in which a reduced sampling regime applies. Regulation 24 makes provision in relation to the monitoring of tritium and total indicative dose. Regulation 25 gives powers to a monitoring local authority to sample Type A supplies for properties, elements, micro-organisms and substances not listed in Schedule 1. Regulation 26 specifies the circumstances in, and parameters in respect of which a monitoring local authority may make a decision in relation to the parameters to be subject to audit monitoring (regulation 20).

Part VIII contains provisions in relation to Type B supplies. Regulation 27 makes provision equivalent to regulation 16 (in relation to risk assessments carried out in respect of Type A supplies). Regulation 18 enables a monitoring local authority to investigate a Type B supply in its area, and Regulations 29 to 31 make provision in relation to the monitoring and sampling of Type B supplies.

Part IX contains provisions in relation to the sampling of private water supplies. Regulation 31 specifies the mechanisms for sampling, including the transportation and analysis of samples. Regulation 32 enables a monitoring local authority to take and analyse a sample from a private water supply at any time and in respect of any element, organism or substance (whether or not specified in any Schedule to the Regulations) in order to establish whether the supply is wholesome.

Regulation 33 makes provision in relation to the charges a local authority may levy in the exercise of its powers and duties under the Regulations.

Part X contains provisions on the information and records to be maintained by local authorities on private water supplies in their area and premises served by such supplies. Regulation 34 requires local authorities to hold information in the form of a register and paragraph (1) of that regulation prescribes the information to be contained in that register. Regulation 35 specifies the circumstances in which information in the register may be inspected or obtained and requires a copy of the register to be provided to SEPA annually. Regulation 36 requires all commercial premises and premises which are used as part of a public activity and which are supplied with a private water supply to prominently display at those premises a notice provided by the local authority for that purpose.

Part X (regulation 36) contains revocation and savings provisions.

There are five Schedules to the Regulations. Schedule 1 comprises Tables A to D (together with the associated notes thereto) and specifies the prescribed concentrations and values for the range of parameters which require to be investigated to determine whether a private water supply is wholesome. Schedule 2 comprises Tables A to C, and specifies the parameters, monitoring and sampling frequencies for check and audit monitoring Type A supplies, and the monitoring parameters for Type B supplies. Schedule 3 specifies the matters a local authority must consider before making a decision for the purposes of regulation 26. Schedule 4 contains the matters which a local authority requires to take into account when undertaking a risk assessment for the purposes of regulations 16 or 27. Schedule 5 prescribes the analytical methodology against which samples taken under the Regulations must be analysed.

The Regulatory Impact Assessment in relation to these Regulations has been placed in the library of the Scottish Parliament and a copy can be obtained from the Water Division, Scottish Executive Environment and Rural Affairs Department (SEERAD), Victoria Quay, Leith, Edinburgh, EH6 6QQ.