

## **EXECUTIVE NOTE**

### **THE WATER QUALITY (SCOTLAND) REGULATIONS 2010**

#### **SSI /2010/95**

1. The above instrument was made by the Scottish Ministers in exercise of powers conferred by Part VIA of the Water (Scotland) Act 1980 (“the 1980 Act”) and section 2(2) of the European Communities Act 1972. The instrument is subject to negative resolution parliamentary procedure.

#### **Policy objectives**

2. The purpose of the Instrument is to further transpose Council Directive 98/83/EC (“the Drinking Water Directive”), most particularly in respect of water quality failures which are attributable to the domestic distribution system in establishments and premises such as schools, hospitals and restaurants where water is supplied to the public.

3. The Instrument also introduces a number of provisions to ensure clear transposition of the Directive and to secure compliance with its requirements in relation to a number of technical issues, for example, the need to verify that disinfection treatment is effective.

#### **Background**

4. The Water Quality (Scotland) Regulations 2010 (“the 2010 Regulations”) have been made in response to an infraction case raised by the European Commission (case 2006/2005), and in particular to the Reasoned Opinion given by the Commission on 20<sup>th</sup> November 2009, that the UK Member State had failed to transpose correctly certain Articles of the Drinking Water Directive.

5. As well as the 2010 Regulations, the Drinking Water Directive is transposed in Scotland through the Water Supply (Water Quality) (Scotland) Regulations 2001 (last amended by SSI 2001 No. 238), the Private Water Supplies (Scotland) Regulations 2006, and the Private Water Supplies (Notices) (Scotland) Regulations 2006. These Instruments were made by the Scottish Ministers in exercise of powers conferred by the 1980 Act and section 2(2) of the European Communities Act.

6. The overriding objective of the 2010 Regulations and other domestic water quality legislation is to ensure the provision of clean and wholesome water for human consumption purposes.

7. In order to comply with Article 6(2), as read with Article 8, of the Drinking Water Directive, the 2010 Regulations amend the 1980 Act to enable a local authority to require owners of establishments and premises where water is supplied to the public to undertake remedial action where water quality failures are attributable to domestic distribution systems within such buildings.

8. In particular, the 2010 Regulations amend the 1980 Act to place a general duty on local authorities to:

- investigate a water quality failure arising from the domestic distribution system of premises and establishments where water is supplied to the public to determine its cause;
- instruct remedial action through the service of a notice on the person who owns, or is responsible for, the domestic distribution system (most likely the owner of the building) and;
- ensure that affected consumers are notified of any risk to their health.

9. Failure, without reasonable excuse, to comply with the terms specified in the notice of improvement will be an offence to which the responsible person will be liable, on summary conviction, to a fine not exceeding level 5 of the standard scale.

10. To comply with the Reasoned Opinion, the 2010 Regulations make a number of technical amendments to the Water Supply (Water Quality) (Scotland) Regulations 2001 and the Private Water Supplies (Scotland) Regulations 2006 to:

- create a duty to minimise contamination from disinfection by-products and to verify the effectiveness of the disinfection process;
- ensure that remedial action is taken in relation to the failure of an indicator parameter where this is needed to protect human health;
- notify consumers of remedial action taken in relation to non-compliance with water quality standards;
- ensure that there are no authorised departures from the requirements of the regulations in respect of failures in microbiological parameters; and
- clarify sampling frequencies.

11. None of these technical amendments have a significant impact on the role or functions of either Scottish Water or local authorities in relation to water quality.

12. The 2010 Regulations introduce the measures considered necessary to comply with the Reasoned Opinion and complete the transposition of the Drinking Water Directive. Some amendments have been made to the existing regulations on public and private supplies in consequence of the changes made to the 1980 Act, simply to ensure that there is consistent legislative treatment of those failures which fall under Article 6(2) of the Directive and those failures arising more generally, in either a private or the public supply. The 2010 regulations largely reflect what already happens in practice and will have minimal impact on the role of enforcement authorities in ensuring safe drinking water.

## **Consultation**

13. The strict timescale for compliance imposed by the Commission limited opportunities for consultation. However, throughout the development of the 2010 Regulations the Scottish Government worked with key stakeholders, including the Drinking Water Quality Regulator for Scotland, Scottish Water and the Convention of Scottish Local Authorities, as well as the UK Government, to agree the measures necessary to complete the transposition.

## **Financial implications**

14. The 2010 Regulations largely reflect current enforcement practice and will have no additional financial impact on the Scottish Government, local government, businesses or charities and therefore there is no requirement to undertake a Regulatory Impact Assessment.

Scottish Government Environmental Quality Directorate  
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