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STATUTORY INSTRUMENTS

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**2000 No. 1297**

**WATER INDUSTRY, ENGLAND AND WALES**

**The Drinking Water (Undertakings)  
(England and Wales) Regulations 2000**

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| <i>Made</i>                   | - - - - | <i>11th May 2000</i>  |
| <i>Laid before Parliament</i> |         | <i>15th May 2000</i>  |
| <i>Coming into force</i>      | - -     | <i>14th June 2000</i> |

The Secretary of State, being a Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to measures relating to the quality of water intended for human consumption, including water when used in, or in connection with the production and marketing of, food, in exercise of the powers conferred on him by section 2(2) of that Act, hereby makes the following Regulations:

**Citation, commencement, extent and interpretation**

1.—(1) These Regulations may be cited as the Drinking Water (Undertakings) (England and Wales) Regulations 2000 and shall come into force on 14th June 2000.

(2) These Regulations extend to England and Wales.

(3) In these Regulations—

“the relevant enforcement authority” means—

(a) in relation to a company whose area of appointment as a water undertaker is wholly or mainly in Wales, the National Assembly for Wales<sup>(3)</sup>; and

(b) in all other cases, the Secretary of State; and

“water supply zone” has the meaning given by regulation 2 of the Water Supply (Water Quality) Regulations 1989<sup>(4)</sup>.

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(1) S.I.1988/2240.

(2) 1972 c. 68.

(3) see Article 2 of S.I. 1999/672 and the entry in relation to section 19 of the Water Industry Act 1991 in Schedule 1 to S.I. 1999/672 as substituted by article 4 of, and paragraph (e) of Schedule 3 to, S.I. 2000/253 (W.5).

(4) S.I. 1989/1147.

### Acceptance of undertakings

2. An undertaking which relates to a contravention of section 68 of the Water Industry Act 1991<sup>(5)</sup> (water quality) in so far as it implements Directive 80/778/EEC<sup>(6)</sup> (the Drinking Water Directive) shall be accepted by the relevant enforcement authority for the purposes of section 19(1) (b) of that Act (remedial action) only if the provisions of regulations 3 to 5 are complied with.

### Applications

3.—(1) A company offering to give an undertaking must make an application in writing to the relevant enforcement authority setting out—

- (a) the terms of the undertaking proposed;
- (b) details of investigations made to identify the contravention and its cause, including relevant sampling evidence;
- (c) the reason for proposing the remedial steps specified in the undertaking, details of any alternative remedial steps considered and the reason for preferring those proposed;
- (d) whether or not there are any alternative means for maintaining supplies to the population affected by the contravention and, if so, what they are and the reason for not using them;
- (e) the company's estimate of the maximum deviation from the quality required by section 68 of the Water Industry Act 1991 in relation to each relevant parameter which is likely to occur while remedial steps are being taken and an explanation of the basis of that estimate;
- (f) an explanation of the measures proposed for monitoring the quality of water supplied in relation to each relevant parameter, and for preventing any danger to public health arising, while remedial steps are being taken; and
- (g) all other information on which the company relies to support its application.

(2) In this regulation, "relevant sampling evidence" means details of all relevant samples taken, including the date and place at which each such sample is taken and the results of its analysis.

### Content of undertakings

4. The undertaking must specify—

- (a) the nature of the contravention and its cause or suspected cause;
- (b) the water supply zone affected and the size of the population supplied;
- (c) the remedial steps which are to be taken and the date by which each step is to be completed;
- (d) the maximum deviation from the quality required by section 68 of the Water Industry Act 1991 in relation to each relevant parameter which the company undertakes to ensure is not exceeded while remedial steps are being taken; and
- (e) the measures which are to be taken to monitor those parameters, and to prevent any danger to public health arising, during that period.

### Conditions of acceptance

5. The relevant enforcement authority must be satisfied that—

- (a) the specified remedial steps are being and will be taken as quickly as possible and that the dates specified in the undertaking are consistent with this;

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(5) 1991 c. 56; and see regulation 3 of S.I. 1989/1147 as amended by regulation 2(2) and (3) of S.I. 1989/1384 and paragraph 2 of the Schedule to S.I. 1991/1847.

(6) O.J. No. L229, 30.8.80, p.11.

- (b) there is no potential danger to human health;
- (c) there are no reasonable alternative means for maintaining supplies to the population affected by the contravention; and
- (d) the specified remedial steps are the most appropriate in the circumstances of the case for remedying the contravention as quickly as possible.

#### **Cases where conditions of acceptance are no longer satisfied**

6. A relevant enforcing authority shall no longer rely on an undertaking accepted under these Regulations as a means of ensuring that the contravention is remedied if it ceases to be satisfied about the matters specified in regulation 5 above.

#### **Transitional provisions**

7.—(1) An undertaking accepted before 14th June 2000 shall have effect as if it had been accepted in accordance with the provisions of these Regulations.

(2) The relevant enforcement authority shall, by no later than [31st July 2000], review each such undertaking, and following the review shall no longer rely on it as a means of ensuring that the contravention is remedied, if—

- (a) its terms do not comply with the requirements of regulation 4 above; or
- (b) it is not satisfied at any time about the matters specified in regulation 5 above.

#### **Amendment of section 19(1) of the Water Industry Act 1991**

8. At the beginning of section 19(1) of the Water Industry Act 1991 (exceptions to the duty to make an enforcement order) there shall be inserted the words “Subject to the Drinking Water (Undertakings) (England and Wales) Regulations 2000,”.

Signed by authority of the Secretary of State for the Environment, Transport and the Regions

*Michael Meacher*  
Minister of State,  
Department of the Environment, Transport and  
the Regions

11th May 2000

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made to comply with the judgment of the Court of Justice of the European Communities in Case C-340/96, *Commission v United Kingdom* [1999] ECR I-2023.

The Regulations specify requirements which must be satisfied before an undertaking given by a water company may be accepted by the relevant enforcement authority under section 19(1)(b) of the Water Industry Act 1991 for the purposes of ensuring compliance with requirements of Directive [80/778/EEC](#) (the Drinking Water Directive) (regulation 2). The Regulations prescribe—

- (a) how applications in connection with such undertakings are to be made to the relevant enforcement authority (regulation 3);
- (b) what must be specified in such undertakings (regulation 4);
- (c) the conditions for acceptance of such undertakings (regulation 5);
- (d) what happens if those conditions cease to be satisfied (regulation 6); and
- (e) transitional provisions in relation to existing undertakings (regulation 7).

The Regulations also amend section 19(1)(b) of the Water Industry Act 1991 to reflect the new requirements (regulation 8).