

EXPLANATORY MEMORANDUM TO
THE WATER FLUORIDATION (PROPOSALS AND CONSULTATION) (ENGLAND)
REGULATIONS 2013

2013 No. 301

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument relates to the addition of fluoride to drinking water to protect against tooth decay. The Health and Social Care Act (“the 2012 Act”)¹ amends the Water Industry Act 1991 (“the 2012 1991 Act”), with the effect that responsibility for conducting public consultations on fluoridation is transferred from Strategic Health Authorities (SHAs) to first tier local authorities with effect from 1st April 2013. The instrument sets conditions for the conduct of consultations and decision making on proposals for either new fluoridation schemes or variations, maintenance or the termination of existing fluoridation schemes. The Instrument revokes the current regulations, the Water Fluoridation (Consultation) (England) Regulations 2005², which made provision for SHAs to consult in relation to fluoridation arrangements.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The instrument reflects the new structures for the health services introduced by the 2012 Act which included amendments to the 1991 Act to transfer responsibility for conducting consultations on fluoridation from SHAs to local authorities.

5. Territorial Extent and Application

5.1 This instrument applies to England

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 It is the government’s policy that decisions on water fluoridation should be taken locally. The area of a water supply system is likely to extend beyond the area of a single local authority and, where this is the case, the 1991 Act (as amended) requires that the local authority making a proposal in relation to a fluoridation scheme should notify other affected authorities to give them the opportunity to decide whether they wish to proceed with the proposal. If the affected local

¹ The Health and Social Care Act 2012
<http://www.legislation.gov.uk/ukpga/2012/7/contents>

² The Water Fluoridation (Consultation) (England) Regulations 2005
<http://www.legislation.gov.uk/uksi/2005/921/contents/made>

authorities are in favour of proceeding by a majority of 67 per cent or more, they must establish or arrange for a joint committee to progress the proposal for the fluoridation scheme. The 67 per cent majority is determined by weighting the decision of each authority according to the proportion of individuals who would be affected by the proposal living in its area.

7.2 Fluoridation is controversial and the regulations seek to ensure that with three exceptions, no decisions are taken on fluoridation until after a public consultation has been conducted. The exceptions are where:

- measures to maintain a fluoridation scheme do not extend beyond the need to meet routine operational requirements and and/or health and safety standards;
- proposals for a variation to a fluoridation scheme do not affect the boundary of the area to which the fluoridation arrangements apply or, where they do affect the boundary, would not bring in or exclude more than 20 per cent of houses within the area of the scheme;
- if, against all experience, the Secretary of State identifies evidence of a serious risk to health from water fluoridation and instructs water companies to cease adding fluoride to drinking water.

7.3 Ascertaining opinion during the conduct of a consultation on proposals for new fluoridation schemes and the basis on which the outcome of the consultation is determined have also proved controversial with a recent decision challenged through judicial review.³ The Department accepts that local authorities have considerable experience of conducting consultations including how to assess the balance of public opinion during a consultation. It should be noted, however, that the government does not consider that decisions on fluoridation proposals should be determined solely by a count of the number of representations received or by local referendums.

7.4 The instrument requires the proposing local authority or joint committee (where other local authorities are affected) to take account of the extent of support for the proposal and the strength of any scientific or ethical arguments advanced during the course of a public consultation on a fluoridation proposal. In addition, they must also consider the extent of need among the population (for protection against tooth decay), the potential capital and operating costs and any evidence of benefits to the health and wellbeing of the individuals who would be affected by the proposal.

7.5 Then the instrument requires that, for a decision to proceed with a proposal, there must be a majority of votes of 67 per cent in favour with votes allocated to each authority based on the proportion of people in its area who would be affected by the proposal.

7.6 The instrument also provides for consultations on proposals for the variation and termination of existing fluoridation schemes; and for maintaining an existing scheme by upgrading or replacing a fluoridation plant, except where this is required to meet operational requirements or health and safety standards at the fluoridation plant. As far as they are relevant, the same conditions apply to these consultation as to those described above for new fluoridation schemes.

7.7 Recognising that the conduct of consultations and the procurement and installation of the plant required to fluoridate the water are costly and that the effects of fluoridation are only evident over time, the instrument sets a minimum term of twenty years between consultations on the termination of a fluoridation scheme.

³ Milner v South Central Strategic Health Authority <http://www.leighday.co.uk/News/2011/February-2011/Fluoridation-judicial-review-decision-published>

8. Consultation outcome

8.1 The Department issued a consultation document on 4 September 2012 with proposals for the content of the regulations. 136 responses were received - from Local Authorities, NHS and other health bodies and individuals (further details are in the Appendix). Although the consultation document did not seek views on the merits of water fluoridation, many respondents chose to express views on this subject. The majority of respondents favoured water fluoridation as a valuable public health measure but, as with the views of opponents of fluoridation, their views were only taken into account where they were relevant to the questions posed in the consultation.

8.2 The Department has made the following changes in response to comments received on the consultation document:

- where there is no consensus among the local authorities on a joint committee, all decisions should be made by weighted population voting (not just when four or more local authorities were affected as proposed in the consultation document);
- the joint committee may not proceed with a fluoridation proposal unless there is a majority vote of 67 per cent or more in favour;
- decisions on the membership of joint committees should be left to the local authorities involved and not prescribed in regulations;
- local authorities can be relied upon to take advice from their directors of public health on fluoridation proposals without it being made a statutory duty;
- in deciding the outcome of a consultation on a fluoridation proposal the local authority or joint committee should consider the strength of the scientific evidence including any benefits to the health and wellbeing of the individuals that would be affected by the proposal (they would not be required to consider whether the health arguments in favour of proceeding outweigh all arguments against proceeding as proposed in the consultation document);
- as far as applicable the same process should be followed in conducting consultations and making decisions on proposals to vary or terminate existing fluoridation schemes as for proposals for new fluoridation schemes; and
- there should be a minimum interval of twenty years between consultations on proposals to terminate fluoridation schemes.

9. Guidance

9.1 The Department plans to issue guidance to local authorities on implementation of the instrument which will include sources of information on the latest research evidence on the effects of fluoridation, good practice on the conduct of consultations and advice to local authorities and water companies on assessing the feasibility of a fluoridation proposal.

10. Impact

10.1 Because local authorities meet the full costs that water companies incur in implementing and operating fluoridation schemes, these regulations do not affect business, the private sector or civil society organisations. An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk .

11. Regulating small business

11.1 The instrument does not apply to small business.

12. Monitoring and Review

12.1 The intention of the instrument is to provide local authorities with the option of a population based measure to reduce inequalities in oral health. The Department regularly commissions dental health surveys which show that levels of dental decay are strongly associated with economic and social deprivation except in areas where the water is fluoridated. The results of these surveys will be monitored to check that the protective effect of fluoridation is continuing. Findings in an area in which a new fluoridation scheme was introduced would be scrutinised to see if the expected reduction in levels of decay was achieved.

12.2 The Department also maintains regular contacts with the water industry through which any problems with practical arrangements for fluoridating a water supply can be discussed. Where necessary the Department will seek expert advice from the Drinking Water Inspectorate on technical issues

13. Contact

Amit Bose at the Department of Health (Tel: 0207 972 3700 or e-mail: amit.bose@dh.gsi.gov.uk) can answer any queries regarding the instrument.

Appendix

RESPONDENTS TO THE CONSULTATION ON THE ARRANGEMENTS FOR CONSIDERATION OF PROPOSALS ON THE FLUORIDATION OF DRINKING WATER

Individuals who responded

Ahmed, Dr Aliko	Sargeant, Dr Lincoln
Anderson Scott	Smith Joy
Bagchi Cynthia	Smith Judy
Baker Clive	Smith Karen
Beal John	Smith, A R
Blackburn, Counsellor Sudha	Smith, C A
Cooper Margaret	Spencer Liz
Davey Margaret	Taylor Keith MEP
Drewe Jennifer	Thomas, C M
Ducksworth, Dr Jenny	Tomlinson Sarah
Earl Baldwin of Bewdley	Townsend Ian
Eastwood Colin	Wegner Anya
Edmondson-Jones, Dr Paul	Weldon Julia
Finn Jane	White, Professor Deborah
Fletcher Sue	
Glazebrook Peter	
Grant Siobhan	
Hamburger Rosalind	
Harries, Dr Jenny	
Hastings, Shirley A	
Hillman Linda	
Hooper Brian	
Howe Sheena	
Huetting Ivor	
Hunt, Anna Lee	
Iphofen, Dr Ron	
Jarvis, Malcolm G	
Jeffcott Wendy	
John, Dr J H	
Jones Sheila	
Joseph Penny	
Kim	
Knibb Daniel	
Kunonga Edward	
Lennon, Professor Mike	
Lewis, Dr Julian MP	
Littlehales Stuart	
Lord Colwyn	
Lord Hunt of Kings Heath	
Massey Vicky	
McCool Suz	
Mcgill Dilys	
Merry, Dr Alison	
Morris, Dr A J	
Mulliner, Margaret-Louise	
Peckham Anna	
Peckham Nicholas	
Peckham, Professor Stephen	
Pope, Councillor Andrew	
Price Maliya	
Roberts Gwynne	
Sackin Michael	

Organisations which responded

Association of Directors of Public Health
Avon PCT
Bradford & Airedale LDC
British Association for the Study of Community Dentistry
British Dental Association
British Fluoridation Society
Chartered Institute of Environmental Health
Cheshire Merseyside DsPH
Coventry City Council
DPH Department, NHS Birmingham and Solihull
Faculty of Dental Surgery
Faculty of General Dental Practice
Halton Borough Council
Hampshire & Isle of White LDC
Hampshire CC
Hull and East Riding of Yorkshire LDC
Humberside Dental Development Group
Humberside DsPH
Knowsley MBC
Leicester City Council
Local Government Association
Local Residents Association in Southampton
National Pure Water Association Ltd
Newcastle City Council
NHS Birmingham and Solihull
NHS Bradford City CCG & NHS Bradford District CCG
NHS Bristol
NHS Coventry
NHS East Midlands
NHS East of England
NHS Greater Manchester
NHS Hampshire
NHS Herefordshire
NHS London
NHS Plymouth
NHS Portsmouth CCG
NHS Sheffield & NHS Rotherham
NHS Somerset
NHS South of England
NHS Walsall
NHS Warwickshire
NHS West Midlands
North Yorkshire LPN
Northern Devon Healthcare
Nuffield Council on Bioethics
Portsmouth City Council
Rotherham Metropolitan Borough Council
Royal College of Surgeons
Safe Water Information Service
Salford City Council
Sandwell PCT
Severn Trent
Sheffield City Council
Southampton, Hampshire, Isle of Wight, Portsmouth LPN
Southampton, Hampshire, Isle of Wight, Portsmouth PCT Cluster
Southampton City Council
Southampton CCG

Southampton Health Overview and Scrutiny Committee
Staffordshire CC
Stockton B C
Tameside MBC
Tameside Glossop Oral Health Advisory Group
UK Faculty of Public Health
Warwickshire CC
West Midland Against Fluoridation
Wolverhampton City PCT
Wolverhampton Department of Public Health
Wolverhampton Local Authority
Yorkshire & Humber SHA
Yorkshire & Humber and NE DPH Network

Glossary

CCG Clinical Care Commissioning Group
CC County Council
DPH Director of Public Health
LDC Local Dental Committee
LPN Local Professional Network
MBC Metropolitan Borough Council
PCT Primary Care Trust
SHA Strategic Health Authority