

**EXPLANATORY MEMORANDUM TO**  
**THE PRIVATE WATER SUPPLIES (ENGLAND) REGULATIONS 2016**  
**2016 No. 618**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department of Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 The instrument provides the legislative framework for drinking water quality in England in respect of private supplies of water intended for human consumption including cooking, drinking, food preparation and other domestic purposes as well as water used in food production undertakings. Private supplies are supplies of water other than provided directly by a water undertaker or licensed water supplier. These water supplies may be owned for example by private individuals, small companies and hotels. Private supplies to single households are exempt from monitoring and risk assessment unless requested by the owner or occupier. Local authorities enforce the legislation.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 This instrument revokes and replaces the Private Water Supplies Regulations 2009 (as amended) (S.I 2009/3101) (“the 2009 Regulations”). The 2009 Regulations transpose Council Directive 98/83/EC on the quality of water intended for human consumption in relation to private water suppliers. They also supplement the provisions set out in Chapter 3 of the Water Industry Act 1991. Local authorities have duties under sections 77 to 85 of the 1991 Act relating to private water supplies. They are also responsible for enforcing this instrument.
- 4.2 This instrument clarifies and consolidates the content from the 2009 Regulations, incorporates new EU monitoring requirements for radioactive substances, in particular radon and makes minor amendments to make the instrument more readily understandable. This is in keeping with the Government’s commitment to better regulation.

**5. Extent and Territorial Application**

- 5.1 The extent of this instrument is England.

5.2 The territorial application of this instrument is England

## **6. European Convention on Human Rights**

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

## **7. Policy background**

### *What is being done and why*

7.1 The primary purpose of this instrument is to transpose the monitoring requirements of Council Directive 2013/51/Euratom (“the Euratom Directive”). The Euratom Directive introduces a new standard for radon in drinking water and provides for more efficient monitoring for radioactive substances (indicative dose, tritium and radon) Radon is a natural radioactive gas which has no taste or smell. It is associated with particular geology and therefore certain parts of the country are more prone. It dissipates quickly in the air.

7.2 Under the 2009 Regulations radon is currently not specifically monitored in private supplies. The Euratom Directive requires that specific monitoring now takes place in areas where there is a risk of radon being present in drinking water, based on local geology and other factors. This approach reflects World Health Organisation guidelines. The Euratom Directive requirements are transposed in this instrument primarily through regulation 11, Part 3 of Schedule 1 and Part 3 of Schedule 3.

7.3 The instrument also introduces a domestic policy change to require new supplies, and supplies that have been out of use for more than 12 months, to be risk assessed by local authorities as soon as is reasonably practicable. The risk assessments of these supplies will then be subject to review every 5 years, as per the duty in regulation 6. There are clear public health benefits from this change. It will mean that the quality of a new private supply will be assessed sooner to ensure that the water is safe and not harmful to health, rather than the supply being left for up to 5 years without being assessed. If an issue with the water supply is identified then this change will enable the private water supplier to rectify this sooner.

7.4 Additional wording and numbering changes have also been made to the instrument to improve clarity of transposition of Council Directive 98/83/EC. This is in keeping with the Government’s commitment to better regulation.

### *Consolidation*

7.5 This instrument revokes and consolidates the 2009 Regulations.

## **8. Consultation outcome**

8.1 A public consultation on this instrument and the draft Water Supply (Water Quality) Regulations 2016 ran for 6 weeks from 1 February to 14 March 2016. We received 44 responses in respect of this instrument, primarily from local authorities. The length of time for the consultation and the nature of respondees reflects the very specific nature of the instrument and the limited changes. There was a request for further guidance and training on radon sampling and monitoring. This will be provided in the guidance prepared by the Drinking Water Inspectorate and supported by regional workshops. The Drinking Water Inspectorate will also issue an updated sampling procedures manual for local authorities. The maximum level of fees that local authorities are

permitted to charge for recovering the costs of sampling and analysis was also raised during the consultation. Work has now started to review these levels.

## **9. Guidance**

- 9.1 The Drinking Water Inspectorate has issued an Information Note about the new regulations to local authorities and will publish revised Guidance on their website. This guidance provides practical application of the regulations as well as clarity on technical aspects.

## **10. Impact**

- 10.1 There is no specific impact on charities or voluntary bodies. The impact to businesses would be the cost for risk assessing a new water supply, which is a one off cost. The change to the regulations means this will occur at the start of the 5 year period rather than later as it could be currently. Under the instrument, local authorities have the ability to pass the sampling costs for monitoring water sources for radon and other radioactive substances onto the relevant persons for the private supply. The top end cost per sample is £90. The cost of any subsequent treatment of water should radon or another radioactive substance be recorded would be in the region of £1000. However, this will not create an additional cost to businesses beyond what is already required.
- 10.2 There is no significant impact on the public sector. Local authorities are already required to assess and monitor private water supplies in their area. Radon will now be added to the analysis suite.
- 10.3 A Validation Impact Assessment is submitted with this memorandum and will be published alongside the explanatory memorandum on the legislation.gov.uk website.

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses. They are already subject to the current monitoring arrangements.

## **12. Monitoring & review**

- 12.1 Regulation 22 of the instrument requires the Secretary of State to carry out a review of the regulations and to produce a report setting out the conclusions of the review within 5 years of the instrument coming into force and at 5 yearly intervals thereafter. This is in line with the duties in section 28 and 30 of the Small Business Enterprise and Employment Act 2015.

## **13. Contact**

- 13.1 Alison Maydom at the Department for Environment, Food and Rural Affairs.  
Telephone: 020 8026 2699 or email: [alison.maydom@defra.gsi.gov.uk](mailto:alison.maydom@defra.gsi.gov.uk) can answer any queries regarding the instrument