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WELSH STATUTORY INSTRUMENTS

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**2018 No. 647**

**The Water Supply (Water Quality) Regulations 2018**

**PART 7**

**Investigations, Authorisation of Departures and Remedial Action**

**Investigations: Schedule 1 parameters**

**18.**—(1) A water undertaker or supplementary licensee must immediately take such steps as are necessary to identify the matters specified in paragraph (2) where it has reason to believe that water of a relevant description—

- (a) fails, or is likely to fail, to satisfy a requirement of regulation 4(2);
- (b) is to be regarded as unwholesome by virtue of regulation 4(4); or
- (c) if regulation 4(6) were ignored, would be regarded as unwholesome by virtue of regulation 4(5).

(2) The matters referred to in paragraph (1) are—

- (a) the cause and extent of the failure or, as the case may be, the apprehended failure;
- (b) the Schedule 1 parameters in respect of which the prescribed concentration or value has not been, or is unlikely to be, achieved; and
- (c) in relation to each parameter so identified, whether the failure, or apprehended failure, to achieve the prescribed concentration or value is attributable—
  - (i) to the domestic distribution system;
  - (ii) to the maintenance of that system; or
  - (iii) to neither of those matters.

(3) Where a departure has been authorised under this Part—

- (a) paragraph (1) will apply only in respect of the Schedule 1 parameters (if any) that are not specified in the authorisation; and
- (b) every water undertaker or supplementary licensee which has reason to believe that water of a relevant description fails, or is likely to fail, to satisfy the concentration or value required by the authorisation in relation to any Schedule 1 parameter, must immediately take such steps as are necessary to identify the matters specified in paragraph (4).

(4) The matters referred to in paragraph (3) are—

- (a) the cause and extent of the failure or, as the case may be, the apprehended failure;
- (b) the Schedule 1 parameters in respect of which the required concentration or value has not been, or is unlikely to be, achieved; and
- (c) in relation to each parameter so identified, whether the failure, or apprehended failure, to achieve that concentration or value is attributable—
  - (i) to the domestic distribution system;

- (ii) to the maintenance of that system; or
- (iii) to neither of those matters.

(5) As soon as possible after the matters specified in paragraph (2) or (4), as the case may be, have been identified, the water undertaker or supplementary licensee must—

- (a) notify the Welsh Ministers—
  - (i) of those matters;
  - (ii) whether it is its opinion that, in relation to each parameter identified in accordance with paragraph (2)(b) or (4)(b), a failure in respect of that parameter is likely to recur;
  - (iii) of the action (if any) taken by it in relation to a failure which is attributable to the domestic distribution system or the maintenance of that system; and
- (b) send a copy of that notice to any other relevant supplier which uses the supply system for the purposes of supplying water to consumers who are likely to be affected by the failure.

(6) Where the water undertaker or supplementary licensee has identified a failure attributable to the domestic distribution system or to the maintenance of such a system, it must, at the same time as notification is given under paragraph (5)—

- (a) by notice in writing—
  - (i) to those of its consumers who are likely to be affected by the failure; and
  - (ii) to any other relevant supplier which uses the supply system for the purposes of supplying water to consumers who are likely to be affected by the failure, inform them of the nature of the failure and provide details of the steps (if any) that, in its opinion, it is necessary or desirable for those consumers to take in the interests of their health; and
- (b) send a copy of that notice to the Welsh Ministers and to each appropriate local authority.

(7) A relevant supplier which receives a notice under paragraph (6)(a)(ii) must immediately send or cause to be sent a copy of that notice to those of its consumers who are likely to be affected by the failure.

(8) A water undertaker or supplementary licensee which has complied with the requirements of paragraphs (5) and (6) need not, in respect of the same failure or apprehended failure, comply with the requirements of regulation 35(6)(a)(iv).

(9) Where such a failure as is mentioned in paragraph (1) relates to the copper or lead parameter, the relevant supplier must, as soon as reasonably practicable after the occurrence, modify or replace such of its pipes and their associated fittings as it knows or has reason to believe have the potential for contributing to copper or lead in the water supplied to the premises, so as to eliminate that potential (whether or not the presence of copper or lead in those pipes contributed to the failure).

### **Investigations: indicator parameters**

**19.—**(1) Where a water undertaker or supplementary licensee has reason to believe that water of a relevant description does not meet the specifications for indicator parameters set out in Schedule 2, it must immediately take such steps as are necessary to identify—

- (a) whether water of a relevant description does or does not meet the specifications;
- (b) the indicator parameters in respect of which the specifications are not met;
- (c) if the specification for the coliform bacteria or colony counts parameter (items 4 and 5 in Schedule 2) is not met, whether the inability to meet that specification is attributable—
  - (i) to the domestic distribution system;
  - (ii) to the maintenance of that system; or

- (iii) to neither of those matters;
  - (d) if the specification for the tritium parameter is not met, whether the inability to meet the specification is attributable to artificial radionuclides.
- (2) As soon as possible after the matters specified in paragraph (1) have been identified, the water undertaker or supplementary licensee must—
- (a) notify the Welsh Ministers—
    - (i) of those matters;
    - (ii) whether it is its opinion that, in relation to each parameter identified in accordance with paragraph (1)(b), a recurrence of the inability to meet the specification in respect of that parameter is likely; and
  - (b) send a copy of that notice to any other relevant supplier which uses the supply system for the purposes of supplying water to consumers who are likely to be affected by the failure.
- (3) Where, in a case to which paragraph (1)(c) applies, the inability to meet the specification has been identified as attributable to the domestic distribution system or to the maintenance of that system, the water undertaker or supplementary licensee must, at the same time as notification is given under paragraph (2)—
- (a) by notice in writing—
    - (i) to those of its consumers who are likely to be affected by the failure; and
    - (ii) to any other relevant supplier which uses the supply system for the purposes of supplying water to consumers who are likely to be affected by the failure, inform them of the nature of the failure and provide details of the steps (if any) that, in its opinion, it is necessary or desirable for those consumers to take in the interests of their health; and
  - (b) send a copy of that notice to the Welsh Ministers and to each appropriate local authority.
- (4) A relevant supplier which receives a notice under paragraph (3)(a)(ii) must immediately send or cause to be sent a copy of that notice to those of its consumers who are likely to be affected by the failure.

### **Action by the Welsh Ministers**

**20.**—(1) Where—

- (a) a notification given in accordance with paragraph (6) of regulation 18 in the circumstances mentioned in paragraph (1) of that regulation (including that paragraph as read with paragraph (4)(a) of that regulation) discloses—
    - (i) a failure in respect of a parameter specified in Table B in Schedule 1, and
    - (ii) that the failure is not attributable to the domestic distribution system or the maintenance of that system, and
  - (b) it appears to the Welsh Ministers that the failure is not trivial and is likely to recur,
- the Welsh Ministers may, by notice in writing to any relevant supplier which uses the supply system for the purposes of supplying water to consumers in respect of which the notification was given, require that relevant supplier to seek a departure in accordance with regulation 22.

(2) The exercise by the Welsh Ministers of the power conferred by paragraph (1) will not preclude the exercise by the Welsh Ministers of the power conferred by section 18 of the Act (orders for securing compliance with certain provisions)(1).

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(1) Section 18 was amended by sections 36(2) and 49(2) of, and paragraph 4 of Schedule 8 to, the Water Act 2003, and by paragraph 26 of Schedule 7 to the Water Act 2014.

(3) Where—

- (a) a notification given in accordance with regulation 18(5) in the circumstances mentioned in regulation 18(3)(b) discloses—
  - (i) a failure in relation to any parameter specified in Table B in Schedule 1, and
  - (ii) that the failure is not attributable to the domestic distribution system or the maintenance of that system, and
- (b) it appears to the Welsh Ministers that the failure in respect of that parameter is not trivial and is likely to recur,

the Welsh Ministers must consider whether to vary the terms of an authorisation under regulation 22.

(4) Where—

- (a) a notification given in accordance with regulation 19(2) discloses an inability to meet the specification applicable to an indicator parameter, and
- (b) the Welsh Ministers consider that the inability poses a potential danger to human health,

the Welsh Ministers must, by notice in writing to any relevant supplier which uses the supply system for the purposes of supplying water to consumers in respect of which the notification was given, require that relevant supplier to take such steps as may be determined by the Welsh Ministers and specified in the notice.

(5) A relevant supplier to whom a notice under paragraph (4) has been given must take the steps specified in the notice

#### **Failure attributable to domestic distribution system where water is supplied to the public**

**21.**—(1) Paragraph (3) applies where the Welsh Ministers consider that the failure (or, in the case of regulation 18, apprehended failure) disclosed by a notification under regulation 18(5) or regulation 19(2)—

- (a) is attributable to the domestic distribution system, or the maintenance of that system, in premises where water supplied for regulation 4(1) purposes is made available for use by the members of the public, including schools within the meaning of the Education Act 1996<sup>(2)</sup>, hospitals and restaurants;
- (b) is not trivial and is likely to recur; and
- (c) in the case of a notification given under regulation 19(2), poses a potential danger to human health.

(2) References in this regulation to “failure” are references to a failure or apprehended failure of the type referred to in paragraph (1).

(3) Subject to paragraph (7), the Welsh Ministers must as soon as possible, serve a notice in writing on—

- (a) the water undertaker that supplies water to the premises, or
- (b) the water undertaker whose supply system is used for the purpose of a water supply licensee making a supply of water to the premises,

requiring it to exercise the power conferred by section 75(2) of the Act (power to prevent damage and to take steps to prevent contamination, waste etc.)<sup>(3)</sup> in respect of the failure.

(2) 1996 c.56.

(3) Section 75 was amended by paragraph 24 of Schedule 8 to the Water Act 2003 and paragraph 72 of Schedule 7 to the Water Act 2014.

(4) The provisions of section 75(2) to (12) of the Act apply in relation to the exercise of the power in section 75(2) in pursuance of a notice served under paragraph (3), subject to the modifications in paragraph (5).

(5) Those modifications are—

- (a) subsections (2)(b) and (4) are to be read as if any reference to “damage, contamination, waste, misuse or undue consumption” were a reference to the failure.
- (b) subsection (9) is to be read as if for the words from “the water undertaker shall have power” to the end of paragraph (b) there were substituted—

““the water undertaker—

- (a) must take those steps itself; and
- (b) subject to subsection (10) may recover any expenses reasonably incurred by the undertaker in taking those steps from the person on whom the notice was served.”

(6) Where the water undertaker exercises the power in section 75(2) of the Act pursuant to a notice served by the Welsh Ministers under paragraph (3) it must inform by notice in writing any of its other consumers who are likely to be affected, of the steps it has taken, and that notice must include a copy of any notice that it has served.

(7) Where the Welsh Ministers consider that the failure (or any aspect of it) is attributable to factors arising from the further distribution by a person other than a water undertaker or water supply licensee of water supplied by a water undertaker or water supply licensee, the Welsh Ministers—

- (a) must not serve a notice under paragraph (3) in respect of that failure or aspect of it; and
- (b) if the Welsh Ministers consider that the local authority needs information or assistance from the water undertaker or water supply licensee in order to be able to carry out its duties under regulation 17 (provision of information) or 18 (investigation) of the Private Water Supplies (Wales) Regulations 2017(4), the Welsh Ministers must serve a notice on the water undertaker or water supply licensee requiring it to provide such information or assistance to the local authority as is specified in the notice.

(8) The water undertaker or water supply licensee on which a notice under this regulation has been served must take the steps specified in the notice as soon as possible.

#### **Authorisation of temporary supply of water that is not wholesome**

**22.**—(1) Subject to paragraph (2), the Welsh Ministers may, upon the written application of a relevant supplier, authorise in accordance with regulation 23 a departure from the provisions of Part 3 of these Regulations in so far as they relate to—

- (a) a parameter specified in Table B in Schedule 1; and
- (b) the supply of water by a relevant supplier in any of the water supply zones which it uses for the purposes of supplying water to consumers.

(2) The Welsh Ministers must not authorise a departure under paragraph (1) unless they are satisfied—

- (a) that the authorisation is necessary to maintain in that zone a supply of water for regulation 4(1) purposes;
- (b) that a supply of water for those purposes cannot be maintained in that zone by any other reasonable means; and

- (c) that the supply of water in accordance with the authorisation does not constitute a potential danger to human health.
- (3) Every water undertaker or supplementary licensee must provide with its application—
- (a) a statement—
    - (i) of the grounds on which the authorisation is sought;
    - (ii) of the water supply zone in respect of which the authorisation is sought;
    - (iii) of the parameters in respect of which the prescribed concentration or value cannot be met;
    - (iv) in respect of each parameter to which paragraph (iii) applies, of the results of the analysis of the samples taken in the water supply zone in question during the 12 months immediately preceding the first day on which the prescribed concentration or value could not be met;
    - (v) in respect of each parameter to which paragraph (iii) applies, of the results of the analysis of the samples (if any) taken in the water supply zone in question between the first day on which the prescribed concentration or value could not be met and the date of the application;
    - (vi) of the average daily quantity of water supplied to that zone or, if that quantity cannot readily be ascertained, of the average daily quantity of water supplied from the treatment works that supplies water to that zone;
    - (vii) of the estimated population of that zone;
    - (viii) as to whether, if a departure were authorised in the terms sought, any relevant food-production undertaking would be affected;
    - (ix) of the period for which the authorisation is sought; and
    - (x) of the reasons why the supply cannot be maintained by other reasonable means;
  - (b) a scheme for monitoring the quality of water supplied in the zone during the period for which the authorisation is sought; and
  - (c) a summary of the steps that it proposes to take, either alone or together with other relevant suppliers, in order to secure that the supply fully satisfies the requirements of Part 3, including—
    - (i) a timetable for the work;
    - (ii) an estimate of the cost of the work; and
    - (iii) provisions for reviewing the progress of the work and for reporting the result of the review to the Welsh Ministers.
- (4) At the same time as it makes an application for an authorisation under paragraph (1), the water undertaker or supplementary licensee must serve a copy of the application and of the statement, scheme and summary referred to in paragraph (3) on—
- (a) every appropriate local authority;
  - (b) the Public Health Wales National Health Service Trust;
  - (c) where the water supply zone is wholly or partly in England, Public Health England; and
  - (d) the Council<sup>(5)</sup>.
- (5) A body on whom documents have been served in accordance with paragraph (4) may make representations to the Welsh Ministers in connection with the application; and any such

(5) See section 219(1) of the Act (as amended by section 56 of, and paragraph 27(7)(b) of Schedule 7 to, the Water Act 2014) which defines “the Council” as the Consumer Council for Water.

representations must be made not later than the end of the period of 30 days beginning with the date on which the application for the authorisation is made.

### **Authorisations: terms and conditions**

**23.**—(1) Subject to paragraph (2), a departure may be authorised under regulation 22 for such period as is in the Welsh Ministers' opinion reasonably required for securing a supply of water for regulation 4(1) purposes that fully satisfies the requirements of Part 3 ("the departure period").

(2) No departure period may exceed 3 years.

(3) Subject to paragraph (4), an authorisation under regulation 22—

(a) must specify—

(i) the grounds on which it is granted;

(ii) every water supply zone in respect of which it is granted;

(iii) the extent to which a departure from the prescribed concentration or value of any parameter is authorised;

(iv) in respect of each parameter to which paragraph (iii) applies, the results of the analysis of the samples taken in each water supply zone in question during the 12 months immediately preceding the first day on which the prescribed concentration or value could not be met;

(v) in respect of each parameter to which paragraph (iii) applies, the results of the analysis of the samples (if any) taken in each water supply zone in question between the first day on which the prescribed concentration or value could not be met and the date of the application;

(vi) the average daily quantity of water supplied from each of those zones or, if that quantity cannot readily be ascertained, the average daily quantity of water supplied from the treatment works that supplies water to that zone;

(vii) the estimated population of each of those zones;

(viii) whether or not any relevant food-production undertaking would be affected; and

(ix) the departure period;

(b) must require the implementation of a scheme for monitoring the quality of water supplied in each of those zones during the departure period (which may be, but need not be, the scheme submitted in accordance with regulation 22(3)(b));

(c) must require the carrying out of the steps which, in its opinion, are reasonably required in order to secure that the supply fully satisfies the requirements of Part 3 (whether or not the steps are those proposed in the summary submitted in accordance with regulation 22(3)(c));

(d) must specify, in relation to those steps—

(i) the timetable for the work;

(ii) an estimate of the cost of the work; and

(iii) provisions for reviewing the progress of the work and for reporting to it the result of the review; and

(e) must require a relevant supplier to provide to the relevant population advice as to the measures (if any) that it would be advisable for them to take in the interests of their health for the whole or any part of the departure period.

(4) In paragraph (3)(e), “relevant population” means the population within the water supply zones to which the authorisation applies and, in particular, those groups of that population for which the supply of water in accordance with the authorisation could present a special risk.

(5) Where paragraph (6) applies, the particulars to be specified in the authorisation are those required by paragraph (3)(a)(iii) and (ix), and paragraph (3)(b) to (e) does not apply.

(6) This paragraph applies where the Welsh Ministers are of the opinion that—

- (a) the extent of the contravention of the requirements of Part 3 as respects any parameter is trivial; and
- (b) the prescribed concentration or value as respects that parameter is likely to be achieved within the period of 30 days beginning with the day on which the prescribed concentration or value in respect of that parameter was contravened.

(7) Where it appears to the Welsh Ministers that a supply of water that fully satisfies the requirements of Part 3 cannot be restored by the end of the departure period, they may authorise a further departure.

(8) Paragraphs (1) to (6) will apply to a further departure authorised under paragraph (7) as they apply to a departure authorised under regulation 22.

(9) Where it appears to the Welsh Ministers that a supply of water that fully satisfies the requirements of Part 3 cannot be restored by the end of the departure period relevant to an authorisation under paragraph (5), they may, in accordance with Article 9(2) of Council [Directive 98/83/EEC](#) on the quality of water for human consumption<sup>(6)</sup>, authorise a third departure.

(10) Paragraph (3) applies to a third departure authorised under paragraph (9) as it applies to a departure authorised under regulation 22, but with the substitution for the words “Subject to paragraph (5)” of the words “Subject to any direction of the European Commission”.

(11) An authorisation under regulation 22 or this regulation may be limited to water supplied—

- (a) from particular sources or classes of source;
- (b) to particular water supply zones or to zones of particular descriptions.

### **Publicity for authorisations**

**24.**—(1) As soon as reasonably practicable after a departure has been authorised under regulation 22 or 23, the specified relevant suppliers must—

- (a) separately publish, by making accessible, free of charge, on their websites via a hyperlink maintained on their respective homepages for at least 14 days—
  - (i) except in a case to which paragraph (4) of regulation 23 applies, a notice containing a statement of the matters specified in paragraph (3)(a)(ii), (iii), (viii) and (ix) of that regulation; and
  - (ii) in a case to which paragraph (4) of regulation 23 applies, a notice containing a statement of the matters specified in paragraph (3)(a)(ii), (iii) and (ix) of that regulation; and
- (b) jointly give such other public notice of the authorisation and of its terms and conditions as the Welsh Ministers may, by notice served on the specified relevant suppliers, reasonably require.

(2) In this regulation “specified relevant suppliers” means relevant suppliers—

- (a) who use the same water supply zone for the purposes of supplying water to consumers; and
- (b) for the purposes of that supply, rely on an authorised departure relating to the same facts.

<sup>(6)</sup> OJ No L 330, 5.12.1998, p 32, as last amended by Commission Directive (EU) 2015/1787 (OJ No L 260, 7.10.2015, p 6).



### **Revocation and modification of authorisations**

**25.**—(1) Subject to paragraphs (2) and (4), the Welsh Ministers may at any time modify or revoke an authorisation under regulation 22.

(2) Subject to paragraph (3) the Welsh Ministers must not revoke or modify an authorisation under regulation 22 without giving at least 6 months' notice in writing of their intention to do so—

- (a) the relevant supplier to which the authorisation relates;
- (b) any other relevant supplier which, for the purposes of supplying water to consumers, uses the water supply zone in respect of which the authorised departure has been given;
- (c) every appropriate local authority;
- (d) the Public Health Wales National Health Service Trust;
- (e) where the authorisation relates to a water supply zone which is wholly or partly in England, Public Health England ; and
- (f) the Council.

(3) The Welsh Ministers may revoke or vary an authorisation under regulation 22 without notice if it appears to the Welsh Ministers that immediate revocation or modification is required in the interests of public health.

(4) A relevant supplier on whose application a departure has been authorised under this Part must notify the Welsh Ministers as soon as the circumstances which gave rise to the application cease to exist; and the Welsh Ministers will thereupon revoke the authorisation without the need for prior notice.