



Department
for Environment
Food & Rural Affairs

www.gov.uk/defra

Consultation on the draft Private Water Supplies (England) Regulations 2016

February 2016



© Crown copyright 2016

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the open government licence v.3. To view this licence visit www.nationalarchives.gov.uk/doc/open-government-licence/version/3/ or email PSI@nationalarchives.gsi.gov.uk

This publication is available at: <https://consult.defra.gov.uk/water/drinking-water-regulations>

Any enquiries regarding this publication should be sent to us at:

Drinking Water Quality
Area 3D
Nobel House
17 Smith Square
SW1P 3JR

Email: drinkingwaterquality@defra.gsi.gov.uk

Contents

Summary of consultation	4
Introduction	6
Part I: Transposition of the Euratom Directive	6
Part II: Additional amendments	8
Clarifications relating to the Drinking Water Directive transposition	8
New requirements	9
Amendments to improve clarity	9
Part III: Potential changes to regulations	11
Summary of consultation questions	11
Next steps	12

Summary of consultation

This consultation seeks views on draft regulations which revoke and replace the Private Water Supplies Regulations 2009. We intend to lay the draft regulations in spring/summer 2016.

Geographical extent

The draft regulations apply in England only. Separate regulations will be made in Scotland, Wales and Northern Ireland.

Purpose

This consultation seeks views on proposals to consolidate and update existing legislation governing private water supplies. The following proposals are outlined:

- Application of new monitoring requirements for radioactive substances laid down in Directive 2013/51/EURATOM.
- Bringing new private water supplies into the monitoring regime.
- Additional wording and numbering changes to improve clarity where the Drinking Water Directive (Council Directive 98/83/EC) has been transposed.
- Changes to improve the clarity of the regulations for private suppliers and local authorities

Audience

We would like to hear from anyone with an interest in the quality of private drinking water supplies including but not limited to local authorities and operators of private water supplies.

Format

This consultation document is divided into sections covering the proposals above. Questions are included throughout the document and are then summarised again at the end of the document.

The responses to these questions will assist in the final drafting of the regulations in England, and will check the accuracy of assumptions that have been made during the preparation of associated impact assessment documents which will be published post consultation.

Responding to this consultation

This consultation will run for 6 weeks from 1 February 2016 to 14 March 2016.

Please complete the online survey at <https://consult.defra.gov.uk/water/drinking-water-regulations>

Alternatively you can send your comments and any enquiries, by email to: drinkingwaterquality@defra.gsi.gov.uk

Confidentiality & Data Protection

Information provided in response to this consultation document, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Introduction

The Private Water Supply Regulations were first introduced in 1991 to provide a legislative framework for the quality of water intended for human consumption that is not supplied by water companies or licensed water suppliers. The 1991 Regulations were revoked and replaced by the Private Water Supplies Regulations 2009 (SI No. 2009/3101). The Private Water Supplies Regulations 2009, as amended by the Water Supply Regulations 2010, transposed the requirements of Council Directive 98/83/EC on the quality of water intended for human consumption (known as the Drinking Water Directive). The Drinking Water Directive included standards for radioactive substances but did not set monitoring requirements for these substances, instead indicating they would be adopted at a later stage.

This consultation concerns proposed amendments to the 2009 Regulations, primarily to transpose the requirements of Council Directive 2013/51/Euratom to lay down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption (referred to in this document as “the Euratom Directive”).

We are also taking the opportunity to clarify certain aspects of the 2009 Regulations (as amended). In doing so, we are aiming to remove unnecessary burdens on business which are not laid down in the overarching EU legislation, known as “gold-plating”.

In keeping with the government’s commitment to better regulation, the 2009 regulations will be consolidated into new regulations, rather than amending regulations being issued.

The draft regulations are included as an Annex to be read alongside this document.

The draft regulations have a review clause that obliges the Secretary of State to carry out a review of the regulations as set out in the Small Business, Enterprise and Employment Act 2015.

Part I: Transposition of the Euratom Directive

The draft regulations introduce new requirements for local authorities to monitor for radioactive substances in private water supplies as required by Article 6 and Annex II of the Euratom Directive. These mainly focus on monitoring for radon, but will also cover Indicative Dose (ID) and tritium.

The relevant requirements in the draft regulations are set out below.

Regulation 11: Monitoring for radioactive substances

New regulation setting out requirements for monitoring for radioactive substances:

- **Regulation 11(1)** sets out the requirements for a local authority to monitor private water supplies in its area for the parameters for radon, tritium and indicative dose as set out in Table D, Part 3 of Schedule 1.

Radon

- **Regulation 11(2)(a)** requires a local authority to ensure that a representative survey is carried out to determine the risk of radon occurring in a private water supply at levels that may exceed the parametric value for radon. Regulation 11(3) provides the details of what the representative survey for radon should cover. Regulation 11(2)(b) requires a local authority to monitor a private water supply for radon where the results of the representative survey or other information indicate that the parametric value for radon might be exceeded. This representative survey has already been carried out for the UK and a report is available indicating low, medium and high risk areas <http://dwi.defra.gov.uk/stakeholders/information-letters/2015/05-2015.pdf>.

Tritium

- **Regulation 11(4)** requires a local authority to monitor a private water supply where there is a risk of an anthropogenic source of tritium or other artificial radionuclides being present at levels above the parametric value for tritium. If the parametric value is exceeded, the local authority must carry out an investigation of the presence of other artificial radionuclides.

Indicative Dose

- **Regulation 11(5)** sets out the requirements for a local authority to monitor a private water supply for the Indicative Dose (ID) parameter. The local authority may also use a screening method for gross alpha and beta activity. If the parametric values are exceeded, the local authority must carry out further analysis in accordance with Part 3 of Schedule 3.

Monitoring frequencies and exclusions

- **Regulations 11(6) and (7)** set out the frequencies for monitoring for radioactive substances.
- **Regulation 11(8)** provides that a local authority may decide to exclude a radioactive parameter from monitoring (a) if it considers that the parameter is unlikely to be present in a private water supply at a level which exceeds that relevant parametric value (b) taking into account the risk assessment and (c) taking into account any guidance issued by the Secretary of State. **Regulation 11(9)** requires the local authority to provide the Secretary of State with the grounds for this decision, along with the necessary documentation supporting the decision.

Q1. Are there any aspects of the new monitoring requirements for radioactive substances where you require further clarity?

New Part 3 of Schedule 1: Indicator parameters – radioactive substances

The indicator parameters of radon, tritium and indicative dose are set out in Table D, in new Part 3 of Schedule 1. This table sets out the radon parametric value [100Bq/l], the tritium parametric value [100Bq/l], and gross alpha and beta as screening methods for ID with corresponding values [0.1Bq/l and 1Bq/l respectively]. The footnotes to the Table have been added in respect of requirements of the Euratom Directive Annexes.

New Part 3 of Schedule 3: Monitoring for indicative dose and analytical performance characteristics

The new Part 3 of Schedule 3 sets out the requirements of Annex III of the Euratom Directive in respect of monitoring for indicative dose and individual radionuclides when the screening values are exceeded¹.

Q2. Are there any aspects of the new technical requirements for radioactive substances where you require further clarity?

Part II: Additional amendments

Clarifications relating to the Drinking Water Directive transposition

The 2009 Regulations (as amended) transpose the Drinking Water Directive. We would like to take this opportunity to provide greater clarity on the transposition of that Directive. These are as follows:

Regulation 3(1)(b)

In the 2009 Regulations, there is a specific exemption for water used for crop washing where the water does not affect the fitness for human consumption of the crop or of any food or drink derived from the crop (regulation 3(c) of the 2009 Regulations).

In regulation 3(1)(b) of the draft regulations, we propose to widen this exemption so that private supplies of water used in any food production will be excluded from the scope of the regulations where the competent authority is satisfied that the water cannot affect wholesomeness of foodstuff in its finished form.

¹ Currently these requirements are set out in guidance, but the guidance will be superseded once the regulations come into force.

Q3. Do you have any comments in relation to widening the existing exemption in regulation 3(1)(b) for crop washing so that it covers water used in any food production process, so long as the wholesomeness of the foodstuff is not affected?

Regulations 6, 9 and 10

Regulations 6, 9 and 10 have been amended to clarify that the DWD applies to 'water supplied as part of a commercial or public activity'. The wording of Regulations 6, 9, 10 will be consistent with the wording in the DWD.

Water supplies that are in scope include: hotels and B&Bs, holiday lets, caravan sites and specific commercial rentals where the landlord retains responsibility for the water supply². Agricultural tenancies and properties provided as part of a job will be excluded.

Q4. Do you have any comments in relation to the requirements to undertake a risk assessment and monitoring on private water supplies that are part of a commercial activity?

New requirements

In addition to the changes set out above, we are proposing to include new requirements in the regulations as follows:

New Regulation 13: New Supplies

The new regulation requires local authorities to carry out a risk assessment and monitor any new private water supply or any supply not used for a period of 12 months, of which it becomes aware, as soon as is reasonably practicable. Such a supply must not be brought into use until the local authority is satisfied that it does not constitute risk to health.

Q5. Do you have any comments in relation to the requirements to undertake a risk assessment for new supplies?

Amendments to improve clarity

A number of other amendments have been proposed that are designed to improve the clarity of the regulations. These changes should not have a significant impact as the aim is to better align the wording with government's current policy aims.

² Further guidance will be provided

Regulation 5(1): Use of products or substances in private supplies

The reference to regulation 31 of Water Supply (Water Quality) Regulations 2000 has been removed. This is now a freestanding provision which sets out the requirements as regards products or substances used in the preparation or distribution of private water supplies.

This reflects the existence of a more flexible approach to approve products and substances that have been used historically in the treatment and distribution of private water supplies with no detrimental effect on water quality, as well as the process for approving products and substances for public water supplies.

Regulation 16: Procedure following investigation

Amendments for the procedure following investigation are as follows:

Regulations 16(3) and 16(4)

The regulations have been reworded to clarify what action should be taken if the cause of a water supply becoming unwholesome is due to the distribution system within a domestic premises and the action if the cause is due to the distribution system within a public building.

For domestic premises, the local authority can only inform occupants of the problem and offer advice. However, they cannot compel replacement or other actions of internal pipes

For public buildings, the local authority must ensure appropriate remedial action is taken, as well as informing occupants and providing advice.

The wording in the 2009 regulations has caused confusion and need greater clarity. The wording has therefore been changed from 'pipework in a single dwelling' to 'distribution within a domestic premises' to avoid confusion with other aspects of the regulations where reference is made to 'single domestic dwelling'.

Regulation 16 (5)

Regulation 16 (5) has been included to make it mandatory for a local authority to act when the cause of the water supply becoming unwholesome or insufficient is not due to the distribution system within a domestic premises. Under this regulation, the local authority must either serve notice in accordance with section 80 Water Industry Act 1991 if water is unwholesome or, if water is a potential danger to health, serve notice under regulation 18 of the draft regulations if the conditions in that regulation are fulfilled.

Q6. Do you have any comments in relation to the proposed amendments to improve the clarity of the regulations?

Part III: Potential changes to regulations

Schedule 5: Fees

While we do not propose any amendments to Schedule 5 (fees) as part of the draft Regulations, we have been made aware of some concerns in relation to the level of fees set out in this schedule. In order for us to assess the issues and fully consider the options for future amendments it would be useful to have further information from Private Water Suppliers and local authorities.

Q7. Do you have any comments in relation to the charging of fees as set out in schedule 5?

Q8. We should be grateful for any general comments you wish to make on the proposals for the draft Private Water Supplies (England) Regulations 2016?

Summary of consultation questions

Question 1: Are there any aspects of the new monitoring requirements for radioactive substances where you require further clarity?

Question 2: Are there any aspects of the new technical requirements for radioactive substances where you require further clarity?

Question 3: Do you have any comments in relation to widening the existing exemption in regulation 3(1)(b) for crop washing so that it covers water used in any food production process, so long as the wholesomeness of the foodstuff is not affected?

Question 4: Do you have any comments in relation to the requirements to undertake a risk assessment and monitoring on private water supplies that are part of a commercial activity?

Question 5: Do you have any comments in relation to the requirements to undertake a risk assessment for new supplies?

Question 6: Do you have any comments in relation to the proposed amendments to improve the clarity of the regulations?

Question 7: Do you have any comments in relation to the charging of fees as set out in schedule 5?

Question 8: Do you have any general comments you wish to make on the proposals for the draft Private Water Supplies (England) Regulations 2016?

Next steps

The consultation will run for 6 weeks. Views and evidence provided during this consultation will help inform the final draft Private Water Supplies (England) Regulations before they are laid in spring/summer 2016.

The government will provide an official response to the views provided, after the consultation ends.