



# Water Industry (Scotland) Act 2002

## 2002 asp 3

### PART 2

#### DRINKING WATER QUALITY REGULATOR

##### *Appointment*

#### **7 Drinking Water Quality Regulator for Scotland**

- (1) The Scottish Ministers may appoint a person to be known as the Drinking Water Quality Regulator for Scotland (in this Part referred to as the “Regulator”) to exercise the functions conferred on the Regulator by this Part.
- (2) The Regulator is to have the general functions of—
  - (a) seeking to ensure that the drinking water quality duties imposed on a public water supplier are complied with, and
  - (b) supervising the enforcement by local authorities of the drinking water quality duties which it is their responsibility to enforce.
- (3) Any person authorised by the Regulator for the purpose (an “authorised person”) may exercise, on behalf of the Regulator, any function of the Regulator.
- (4) In relation to the exercise by an authorised person of a function of the Regulator which that person is authorised to exercise, references in this Part to the Regulator are, so far as necessary, to be construed as, or as including, references to the authorised person.
- (5) An authorisation given for the purposes of subsection (3) does not prevent the Regulator from exercising any function to which the authorisation relates.
- (6) The Scottish Ministers may, after consulting the Regulator, give the Regulator directions of a general or specific character as to the exercise of the Regulator’s functions; and the Regulator must comply with any such direction.
- (7) In this Part—

“drinking water quality duty” means a duty in relation to the quality of water imposed on a water supplier by, under or by virtue of—

  - (a) Part VIA of the 1980 Act,

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- (b) this Act, or
  - (c) such other enactment relating to the quality of water supplied by a water supplier as the Scottish Ministers may by order specify,
- “public water supplier” means Scottish Water.

*Public water suppliers: general powers of Regulator*

## **8 Power to obtain information**

- (1) The Regulator may serve on a person a notice requiring the person—
  - (a) to provide the Regulator, or a person authorised by the Regulator, at a time and place and in the form and manner specified in the notice, with such information relating to the quality of water supplied by a public water supplier as may be specified or described in the notice, or
  - (b) to produce to the Regulator, or to a person authorised by the Regulator, at a time and a place specified in the notice, any documents relating to that matter which are specified or described in the notice and are in that person’s custody or under that person’s control.
- (2) A notice under subsection (1) may be served on—
  - (a) the public water supplier,
  - (b) an officer or employee of the public water supplier,
  - (c) any other person whom the Regulator has reason to believe is or may be in possession of relevant information or documents.
- (3) Nothing in this section authorises the Regulator to require the disclosure of anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.
- (4) References in this section to a document are to anything in which information of any description is recorded; and in relation to a document in which information is recorded otherwise than in legible form, references to producing it are to producing it in legible form.
- (5) Where by virtue of this section documents are produced to any person, that person may take copies of or make extracts from them.
- (6) A person who—
  - (a) refuses or fails, without reasonable excuse, to do anything required of that person by a notice under subsection (1), or
  - (b) intentionally alters, suppresses or destroys a document which that person has been required by such a notice to produce,
 is guilty of an offence.
- (7) A person guilty of an offence under subsection (6) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment, to a fine.

## **9 Powers of entry, inspection etc.**

- (1) For the purpose of establishing whether any drinking water quality duty to which a public water supplier is subject has been, is being or is likely to be complied with, the Regulator may exercise the powers specified in subsection (2).
- (2) Those powers are—
  - (a) power to enter—
    - (i) any premises of the water supplier,
    - (ii) any premises to which a supply of water is provided by the water supplier,
    - (iii) any premises of any other person,for the purpose of exercising any of the powers specified in paragraphs (b) to (d),
  - (b) power to carry out such inspections, measurements and tests on those premises or of substances, articles or documents found there as the Regulator thinks necessary,
  - (c) for the purpose of carrying out such inspections, measurements and tests as the Regulator thinks necessary, power to take away from those premises substances, articles or documents found there,
  - (d) power to take away from those premises such samples of water, land, substances or articles as the Regulator thinks necessary.
- (3) The powers specified in subsection (2) must not be exercised in relation to premises referred to in paragraph (a)(iii) of that subsection unless the Regulator is satisfied that the exercise of those powers in relation to the premises referred to in paragraph (a) (i) and (ii) of that subsection would be insufficient for the purpose specified in subsection (1).
- (4) The owner and occupier of any premises in relation to which the Regulator exercises the powers specified in subsection (2) and any person on such premises when those powers are being exercised must—
  - (a) give the Regulator such assistance, and
  - (b) provide the Regulator with such information,as the Regulator may reasonably require.
- (5) A person who—
  - (a) refuses or fails, without reasonable excuse, to comply with a requirement made under subsection (4), or
  - (b) intentionally obstructs a person acting in the exercise of any power conferred by subsection (1),is guilty of an offence.
- (6) A person guilty of an offence under subsection (5) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment, to a fine.

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### *Enforcement of duties of public water suppliers*

## **10 Enforcement notices**

- (1) Where the Regulator reasonably believes (whether or not following the exercise of the Regulator’s powers under section 9)—
  - (a) that a public water supplier has contravened any drinking water quality duty and the contravention is likely to recur, or
  - (b) that a public water supplier is contravening any drinking water quality duty and the contravention is likely to continue or to recur or both,
 and (in either case) that the water supplier is not taking appropriate steps for the purpose of rectifying the contravention or (as the case may be) preventing its recurrence, the Regulator may serve on the water supplier an enforcement notice.
- (2) In considering whether to serve an enforcement notice the Regulator may consult—
  - (a) the local authority for any area affected by the contravention, and
  - (b) the Health Board for any such area.
- (3) An enforcement notice must specify—
  - (a) the contravention to which it relates,
  - (b) the Regulator’s reasons for believing (as the case may be) that the contravention—
    - (i) has occurred and is likely to recur, or
    - (ii) is occurring and is likely to continue or to recur or both,
  - (c) the date by which the water supplier is required to rectify the contravention or (as the case may be) take steps to prevent its recurrence,
  - (d) any particular steps which the Regulator requires the water supplier to take for that purpose, and
  - (e) the date on which the notice is to take effect.
- (4) An enforcement notice may specify different dates by which different steps specified under subsection (3)(d) must be completed.
- (5) The date referred to in subsection (3)(e) must be no earlier than the day following the last day on which an appeal may be brought under section 11(2).
- (6) Before serving an enforcement notice on a public water supplier under subsection (1), the Regulator must serve a copy of the proposed notice on the water supplier and specify a period, which must expire no less than 7 days and no more than 28 days from the date of service of the notice, within which the water supplier may make representations to the Regulator about the proposed notice.
- (7) The Regulator must take into account any representations in relation to the proposed enforcement notice duly made by the water supplier and may adjust the notice in light of those representations.

## **11 Enforcement notices: further provisions**

- (1) The Regulator must—
  - (a) send a copy of an enforcement notice to the [F1Commission] and to any local authority or Health Board consulted by the Regulator under section 10(2), and

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- (b) arrange for the notice to be published in such manner as the Regulator thinks appropriate for bringing it to the attention of persons affected, or who may be affected, by the contravention.
- (2) A public water supplier on whom an enforcement notice has been served may, by summary application made within 14 days of the date of service, appeal to the sheriff against the notice.
- (3) Where an appeal is brought under subsection (2) the enforcement notice is of no effect until the appeal is withdrawn or finally determined.
- (4) On an appeal under subsection (2) the sheriff may make such order as the sheriff thinks fit.
- (5) The decision of the sheriff on such an appeal is final.
- (6) A public water supplier on whom an enforcement notice has been served—
  - (a) must consult the Health Board for any area affected by the contravention to which the notice relates, and
  - (b) must, in rectifying the contravention or taking steps to prevent its recurrence, have regard to any views expressed by the Health Board.
- (7) The duty under subsection (6) does not apply during any period in which the enforcement notice is of no effect by virtue of subsection (3).
- [<sup>F2</sup>(7A) Where a public water supplier has rectified the contravention specified in an enforcement notice, the Regulator must publish (or arrange for the publication of) information to this effect, in such a manner as the Regulator thinks appropriate for bringing it to the attention of persons affected, or who may have been affected, by the contravention.]

#### **Textual Amendments**

- F1** Word in s. 11(1)(a) substituted (1.7.2005) by [Water Services etc. \(Scotland\) Act 2005 \(asp 3\), s. 37\(2\), sch. 5 para. 7\(1\)](#) (with s. 36); S.S.I. 2005/351, art. 2, sch. 2
- F2** [S. 11\(7A\)](#) inserted (20.4.2010) by [The Water Quality \(Scotland\) Regulations 2010 \(S.S.I. 2010/95\)](#), regs. 1(1), 6

## **12 Failure to comply with enforcement notices**

- (1) This section applies where, in relation to an enforcement notice, a public water supplier—
  - (a) fails to rectify, or (as the case may be) to take steps to prevent the recurrence of, a contravention specified in the notice by the date specified in relation to the contravention under subsection (3)(c) of section 10, or
  - (b) fails to complete a step specified under subsection (3)(d) of that section by a date specified in relation to that step under subsection (4),(or, in either case, by such later date as the Regulator may have substituted under section 14(1)(b)).
- (2) Where this section applies, the Regulator may—

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- (a) enter any premises and carry out the work necessary to rectify or prevent the recurrence of the contravention or, as the case may be, to complete the step, and
  - (b) recover from the water supplier any expenses which the Regulator reasonably incurs in carrying out, or securing the carrying out, of that work.
- (3) The expenses which may be recovered under subsection (2)(b) include such proportion of the Regulator’s administrative expenses (including expenses incurred in establishing the contravention and in connection with the enforcement notice) as the Regulator considers appropriate.
- (4) A person who intentionally obstructs a person acting in the exercise of any power conferred by subsection (2)(a) is guilty of an offence.
- (5) If, at any time after a date referred to in subsection (1), anything which the enforcement notice requires the water supplier to do by that date has not been done, the water supplier is guilty of an offence.
- (6) A person guilty of an offence under subsection (4) or (5) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment, to a fine.
- (7) An offence under subsection (5) may be charged by reference to any day or longer period of time and a public water supplier may be convicted of a second or subsequent offence under that subsection by reference to any period of time following conviction for such an offence.

### **13 Emergencies**

- (1) Where the Regulator reasonably believes—
- (a) that a public water supplier has contravened or is contravening any drinking water quality duty,
  - (b) that as a result of the contravention there is a significant risk to public health or the quality of a public drinking water supply, and
  - (c) that urgent action is necessary to reduce or remove that risk,
- the Regulator may take action in accordance with this section.
- (2) The Regulator may serve on the water supplier an emergency notice requiring the water supplier, by such date as the notice may specify, to take such steps as the notice may specify, being steps which the Regulator considers necessary for the purpose of reducing or removing the risk referred to in subsection (1)(b).
- (3) Without prejudice to subsection (2), the Regulator may—
- (a) enter any premises and carry out such work as the Regulator considers necessary for the purpose mentioned in that subsection, and
  - (b) recover from the water supplier any expenses which the Regulator reasonably incurs in carrying out, or securing the carrying out, of that work.
- (4) The expenses which may be recovered under subsection (3)(b) include such proportion of the Regulator’s administrative expenses (including expenses incurred in establishing the contravention and in connection with the emergency notice) as the Regulator considers appropriate.

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- (5) A person who intentionally obstructs a person acting in the exercise of any power conferred by subsection (3)(a) is guilty of an offence.
- (6) If, at any time after the date specified in the emergency notice (or such later date as the Regulator may have substituted under section 14(1)(b)), anything which the notice requires the water supplier to do has not been done, the water supplier is guilty of an offence.
- (7) A person guilty of an offence under subsection (5) or (6) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment, to a fine.
- (8) An offence under subsection (6) may be charged by reference to any day or longer period of time and a public water supplier may be convicted of a second or subsequent offence under that subsection by reference to any period of time following conviction for such an offence.

#### **14 Variation and withdrawal of notices**

- (1) The Regulator may—
  - (a) withdraw an enforcement notice or an emergency notice,
  - (b) waive or relax any requirement of an enforcement notice or an emergency notice, including substituting a later date for a date specified under section 10(3)(c) or (4) or, as the case may be, section 13(2).
- (2) The powers in subsection (1) may be exercised whether or not the notice has taken effect.
- (3) The withdrawal of an enforcement notice or an emergency notice does not affect the Regulator’s power to issue a further such notice.

#### **15 Register of enforcement notices and emergency notices**

- (1) The Regulator must keep a register of enforcement notices and emergency notices.
- (2) The register must, in relation to each such notice, specify—
  - (a) the name and address of the water supplier on whom the notice was served,
  - (b) the date of service,
  - (c) the compliance date, and
  - (d) in the case of an enforcement notice, the date specified under section 10(3)(e).
- (3) The Scottish Ministers may by order make provision as to—
  - (a) the manner in which the register is to be kept,
  - (b) the information, in addition to that required by subsection (2), which the register is to contain.
- (4) In subsection (2)(c), “the compliance date” means—
  - (a) in relation to an enforcement notice, the date specified under section 10(3)(c),
  - (b) in relation to an emergency notice, the date specified under section 13(2),and, in either case, includes any date substituted for that date under section 14(1)(b).
- (5) The register must be made available for inspection by any person at any reasonable time.

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### *Supervision of local authority enforcement*

#### **16 Power to require information from local authorities**

- (1) A local authority must, on being requested to do so by the Regulator, provide the Regulator with such information held by it as the Regulator may reasonably seek in relation to the enforcement by the local authority of the drinking water quality duties which it is the authority's responsibility to enforce.
- (2) Where a local authority and the Regulator cannot agree whether information is being sought reasonably, either of them may refer the matter to the Scottish Ministers, whose decision is final.

### *Supplementary*

#### **17 Annual reports**

The Regulator must, as soon as practicable after the end of each calendar year, submit to the Scottish Ministers, and publish, a report on the exercise of the Regulator's functions during that year.

#### **18 Powers of entry etc.: further provision**

- (1) Schedule 2 makes further provision about the exercise of powers of entry etc. conferred by sections 9(1), 12(2)(a) and 13(3)(a).
- (2) References in this Part to a power conferred by any of those provisions include references to such a power exercisable by virtue of a warrant under that schedule.

#### **19 Interpretation of Part 2**

In this Part—

- “drinking water quality duty” has the meaning given by section 7(7),
- “emergency notice” means a notice under section 13(2),
- “enforcement notice” means a notice under section 10(1),
- “public water supplier” has the meaning given by section 7(7),
- “Regulator” means the Drinking Water Quality Regulator for Scotland.



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