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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 209**

**The Private Water Supplies (Scotland) Regulations 2006**

**PART V**

**TYPE A SUPPLIES: TEMPORARY DEPARTURE  
FROM REQUIREMENTS OF PART IV**

**Application for authorisation of temporary departure in respect of a Type A supply that is not wholesome**

**8.—**(1) Where a relevant person has reason to believe that a Type A supply fails, or is likely to fail, to satisfy a requirement of regulation 7(2), that person may make an application in writing to the appropriate local authority in respect of that supply, in so far as it relates to a parameter specified in Table B in Schedule 1, for the authorisation of a temporary departure from the provisions of Part IV on the application form approved by that authority for that purpose.

(2) An application under paragraph (1) shall include—

(a) a statement—

- (i) of the grounds on which the authorisation is sought;
- (ii) about the location of the supply in respect of which the authorisation is sought, including the source of the supply, and the addresses of any premises served by that supply;
- (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 (if any) taken in relation to the supply 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 relation to the supply in question between the first day on which the prescribed concentration or value could not be met and the date of the application;
- (vi) estimating the average daily volume of water provided by the supply in so far as that can readily be ascertained and the average number of persons served by the supply;
- (vii) as to whether, if a departure were authorised in the terms sought, any food production undertaking would be affected;
- (viii) of the period for which the authorisation is sought; and
- (ix) of the reasons why the supply cannot be maintained by other reasonable means;

(b) a scheme for monitoring the quality of water provided by that supply during the period for which the authorisation is sought; and

- (c) a summary of the steps that the relevant person proposes to take in order to secure that the supply fully satisfies the requirements of Part IV by the end of the period specified in paragraph 2(a)(viii), 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 appropriate local authority; and
  - (d) the names and addresses of the persons to be notified for the purposes of paragraph (4).
- (3) The applicant shall provide to the appropriate local authority such additional information as may be required by that authority to allow proper consideration of the application.
- (4) At the same time as a relevant person makes an application under paragraph (1), that person shall notify—
- (a) any other relevant person in relation to the supply likely to be affected by the departure;
  - (b) every consumer served by that supply likely to be affected by the departure;
  - (c) every appropriate local authority in relation to the supply;
  - (d) every monitoring local authority in relation to the supply; and
  - (e) every health board in whose area the supply is located,
- with a copy of the application, and the statement, scheme and summary referred to in paragraph (2), and shall provide details of the notification to the appropriate local authority.
- (5) A body or person who has been notified in accordance with paragraph (4) may make representations to the appropriate local authority in connection with the application; and any such representations shall be made not later than the end of the period of 28 days beginning with the date on which the application for the authorisation was made.
- (6) An appropriate local authority shall, on the request of the relevant person, provide such advice or assistance as is reasonably required to enable that person to—
- (a) complete an application for the purposes of paragraph (1); and
  - (b) comply with the requirements of paragraph (4).

#### **Authorisation of temporary departure: terms and conditions**

- 9.—(1) An appropriate local authority shall only determine an application for an authorisation—
- (a) after the expiry of the period for making representations specified under regulation 8(5);
  - (b) where it receives a representation within that period, and that representation is not withdrawn, after having considered that representation; and
  - (c) where it is satisfied that the relevant person has complied with the notification requirements of regulation 8(4).
- (2) An appropriate local authority shall not grant an application for an authorisation made under regulation 8 unless it is satisfied—
- (a) that the authorisation is necessary to maintain a supply of water for human consumption purposes;
  - (b) that a supply of water for those purposes cannot be maintained 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) Subject to paragraphs (4) and (6), an appropriate local authority may authorise a departure for such period (“the departure period”) which, in the opinion of the appropriate local authority, is no longer than is reasonably required in order to secure a supply of water for human consumption purposes which satisfies the requirements of Part IV.

(4) No departure period shall exceed three years.

(5) Subject to paragraph (6), an authorisation under paragraph (3)—

(a) shall specify—

(i) the grounds on which it is granted;

(ii) the location of the supply in respect of which it is granted, including the source of the supply, and the addresses of any premises served by that supply;

(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 (if any) taken in relation to the supply 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 relation to the supply in question between the first day on which the prescribed concentration or value could not be met and the date of application;

(vi) the average daily volume of water provided by the supply, in so far as that can readily be ascertained, and the estimated number of persons served by the supply;

(vii) whether or not any food production undertaking would be affected; and

(viii) the departure period; and

(b) shall require the implementation of a scheme for monitoring the quality of water supplied by that supply in the area in question during the departure period (which may be, but need not be, the scheme submitted in accordance with regulation 8(2)(b)); and

(c) shall—

(i) require the carrying out of the steps which, in the appropriate local authority’s opinion, are reasonably required in order to secure that the supply fully satisfies the requirements of Part IV (whether or not the steps are those proposed in the summary submitted in accordance with regulation 8(2)(c)) by the end of the departure period; and

(ii) specify, in relation to those steps—

(aa) the timetable for the work;

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

(cc) provisions for reviewing the progress of the work and for reporting to the appropriate local authority the result of the review;

(d) shall require the taking of such steps as may be specified to give to the persons served by the supply to which the authorisation applies and, in particular, to those groups of such persons for which the supply of water in accordance with the authorisation could present a special risk, advice as to the measures (if any) that it would be advisable in the interests of their health for those persons to take for the whole or any part of the departure period; and

(e) such additional matters as the appropriate local authority considers necessary.

(6) Where the appropriate local authority is of the opinion—

- (a) that the extent of the contravention of the requirements of Part IV as respects any parameter is trivial; and
- (b) that 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,

the particulars to be specified in the authorisation shall be those required by paragraph (5)(a)(iii) and (viii), and sub-paragraphs (b) to (e) of that paragraph shall not apply.

(7) An appropriate local authority shall, as soon as reasonably practicable, notify the relevant person of the authorisation and its terms.

#### **Authorisation of a second temporary departure**

**10.**—(1) An appropriate local authority shall, before the expiry of the departure period specified in any authorisation granted under regulation 9, review whether the supply fails or is likely to fail to satisfy a requirement of regulation 7(2) by the end of that period.

(2) Where, following the review, it appears to the appropriate local authority that the supply fails or is likely to fail to satisfy a requirement of regulation 7(2) by the end of the departure period, it may, subject to the provisions of this regulation, authorise a second departure.

(3) Where an appropriate local authority proposes to authorise a second departure, it shall notify the relevant person and the Scottish Ministers of—

- (a) the results of the review undertaken in accordance with paragraph (1); and
- (b) the reasons for proposing to authorise a second departure.

(4) Paragraphs (2) to (5) and (7) of regulation 9 shall apply to the authorisation of a second departure as they apply to an authorisation under regulation 9.

#### **Authorisation of a third temporary departure**

**11.**—(1) An appropriate local authority shall, before the expiry of the departure period specified in any authorisation granted under regulation 10, review whether the supply fails or is likely to fail to satisfy a requirement of regulation 7(2) by the end of that departure period.

(2) Where, following the review, it appears to the appropriate local authority that the supply fails or is likely to fail to satisfy a requirement of regulation 7(2) by the end of the departure period, it may, if it considers there are exceptional circumstances for doing so, and subject to the provisions of this regulation, request that the Scottish Ministers seek the authorisation of a third departure from the European Commission, in accordance with Article 9(2) of Council Directive 98/83/EC(1).

(3) Where paragraph (2) applies, the appropriate local authority shall notify the relevant person and the Scottish Ministers of—

- (a) the results of the review undertaken in accordance with paragraph (1); and
- (b) the exceptional circumstances which the authority considers justify its proposal to authorise a third departure.

(4) The Scottish Ministers shall, as soon as reasonably practicable, request an authorisation of a third departure from the European Commission if satisfied that there are grounds for a third departure.

(5) The appropriate local authority shall provide to the Scottish Ministers such information as may be required to enable them to be satisfied that there are grounds for a third departure.

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(1) O.J. No. L 330, 5.12.98.

(6) The Scottish Ministers shall, as soon as reasonably practicable, notify the European Commission's decision as regards the third departure to the appropriate local authority.

(7) Paragraphs (2) to (5) and (7) of regulation 9 shall apply to the authorisation of a third departure as they apply to an authorisation under regulation 9; and paragraph (5) of that regulation shall apply to a departure under this regulation, but with the substitution for the words in paragraph (5) "Subject to paragraph (6)" of the words "Subject to any decision of the European Commission".

#### **Authorisation of temporary departure: other limitations**

**12.** An authorisation under regulation 9, 10 or 11 (as the case may be), may be limited to water supplied—

- (a) from a particular source or class of source;
- (b) to or from a particular area of supply or to/from an area of a particular description; or
- (c) to particular premises or classes of premises.

#### **Authorisation of temporary departure: publicity**

**13.—**(1) As soon as reasonably practicable after a departure has been authorised and notified to the relevant person under regulation 9, 10 or 11 (as the case may be), that person shall—

- (a) notify the persons specified in regulation 8(4)(a) to (e), of the departure and of the matters specified in regulation 9(5)(a) to (e); and
- (b) give such other public notice of the authorisation, and of its terms and conditions, as the appropriate local authority may, by notice in writing to the relevant person, reasonably require.

(2) An appropriate local authority shall, upon the request of the relevant person, provide such advice and assistance as is reasonably required to enable that person to comply with the requirements of paragraph (1).

(3) Where a departure has been authorised under regulation 9 or 10 (as the case may be) in respect of a private water supply which is determined a level 3 supply under Part III, the appropriate local authority shall notify the Scottish Ministers in writing of the departure and its terms within 14 days of its authorisation.

#### **Refusal of temporary departure: notification and publicity**

**14.—**(1) As soon as reasonably practicable after the refusal, either in whole or in part, of a departure under regulation 9, 10 or 11 (as the case may be) the appropriate local authority shall—

- (a) in the case of a refusal under regulation 9 or 10, provide reasons in writing for its decision to the relevant person; and
- (b) in the case of a refusal under regulation 11, notify the relevant person of the European Commission's decision.

(2) Where the appropriate local authority considers it necessary or desirable to do so, at the same time as it provides reasons or notifies the European Commission's decision under paragraph (1), it shall advise the relevant person of the steps or measures (if any) that it is advisable in the interests of their health for persons for which the supply of water, in respect of which the departure has been refused, could present a special risk, to take.

(3) As soon as reasonably practicable after the relevant person has received reasons or notification under paragraph (1), that person shall notify the persons specified in regulation 8(4)(a) to (e)—

- (a) of the refusal and the reasons therefor;
- (b) of any steps or measures advised under paragraph (2); and

- (c) of any other matters the appropriate local authority may, by notice in writing to the relevant person, reasonably require.

### **Revocation and modification of temporary departure**

**15.**—(1) Subject to the provisions of this regulation, an appropriate local authority may at any time modify or revoke an authorisation under regulations 9, 10 or 11 (as the case may be).

(2) Subject to paragraph (3), the appropriate local authority shall not revoke or modify an authorisation without giving at least 28 days' notice in writing of its intention to do so, to—

- (a) the relevant person to which the authorisation relates and to any other relevant person in relation to that supply;
- (b) every consumer served by that supply;
- (c) every monitoring local authority in relation to that supply;
- (d) every health board in whose area the supply is located;
- (e) in the case of an authorisation granted in respect of a private water supply to which the provisions of regulations 10, 11 or 13(3) apply, the Scottish Ministers; and
- (f) such other persons as it considers appropriate.

(3) An appropriate local authority may revoke or modify an authorisation without notice if it appears to it that immediate revocation or modification is required in the interests of public health.

(4) A body or person on whom notice has been served in accordance with paragraph (2), may make representations to the appropriate local authority in connection with the proposed modification or revocation within the period specified in the notice, and the authority shall have regard to any such representations.

(5) The relevant person on whose application a departure has been authorised under this Part shall notify the appropriate local authority as soon as the circumstances which gave rise to the departure cease to exist.

(6) As soon as reasonably practicable after receiving notification under paragraph (5), the appropriate local authority shall revoke the authorisation without the need for prior notice, only on being satisfied that the circumstances which gave rise to the departure cease to exist.