

SCOTTISH STATUTORY INSTRUMENTS

**2010 No. 95**

**WATER SUPPLY**

**The Water Quality (Scotland) Regulations 2010**

<i>Made</i>	- - - -	<i>11th March 2010</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>12th March 2010</i>
<i>Coming into force</i>	- -	<i>20th April 2010</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 <sup>M1</sup> and sections 76B, 76F(5) to (8), 76J, 101(1) and (1A) and 109(1) of the Water (Scotland) Act 1980 <sup>M2</sup> and all other powers enabling them to do so.

**Marginal Citations**

- M1** 1972 c.68. Section 2(2) was amended by the [Scotland Act 1998 \(c.46\)](#) Schedule 8, paragraph 15(3); the [Legislative Regulatory Reform Act 2006 \(c.51\)](#) section 27(1); and the [European Union Amendment Act 2008 \(c.7\)](#) section 3 and Part 1 of the Schedule. The functions conferred on the Minister of the Crown under section 2(2) of the European Communities Act 1972 were, insofar as within devolved competence, transferred to the Scottish Ministers by virtue of section 53 of the [Scotland Act 1998 \(c.46\)](#).
- M2** 1980 c.45. Sections 76B, 76F and 76J were inserted by the [Water Act 1989 \(c.15\)](#), [Schedule 22](#). Sections 76B and 76F were relevantly amended by the [Food Safety Act 1990 \(c.16\)](#) section 56 and by the Water Industry (Scotland) Act 2002 (asp 3) schedule 6, paragraphs 50 and 54 respectively. Section 101(1A) was inserted by the [Natural Heritage \(Scotland\) Act 1991 \(c.28\)](#), [Schedule 10](#), paragraph 9(5). Section 109(1) contains a definition of “prescribed” relevant to the exercise of the statutory powers under which these Regulations are made. The relevant functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the [Scotland Act 1998 \(c.46\)](#).

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Water Quality (Scotland) Regulations 2010 and come into force on 20th April 2010.

(2) In these Regulations—

“the 1980 Act” means the Water (Scotland) Act 1980 <sup>M3</sup>;

“the 2001 Regulations” means the Water Supply (Water Quality) (Scotland) Regulations 2001 <sup>M4</sup>; and

“the 2006 Regulations” means the Private Water Supplies (Scotland) Regulations 2006 <sup>M5</sup>.

#### Marginal Citations

- M3** 1980 c.45.  
**M4** S.S.I. 2001/207.  
**M5** S.S.I. 2006/209.

### Amendment of the Water (Scotland) Act 1980

2. After section 76F of the 1980 Act (general functions of local authorities in relation to water quality), insert—

#### “76FA Domestic distribution failures where water is supplied to the public

(1) A local authority must immediately investigate to determine the cause of a “relevant water quality issue”, being an issue relating to water quality which—

- (a) affects premises where water is supplied to the public (such as schools, hospitals and restaurants) within the area of the local authority;
- (b) is attributable to the domestic distribution system (within the meaning of Article 2.2 of Council Directive 98/83/EC on the quality of water intended for human consumption) of those premises, or to the maintenance of that system; and
- (c) requires, or would require, notification to the Scottish Ministers under—
  - (i) regulation 17(5) of the Water Supply (Water Quality) (Scotland) Regulations 2001 (SSI 2001/207);
  - (ii) regulation 18(2) of those Regulations;
  - (iii) regulation 17(3) of the Private Water Supplies (Scotland) Regulations 2006 (SSI 2006/209); or
  - (iv) regulation 18(2) of those Regulations.

(2) On completion of the investigation mentioned in subsection (1) above the local authority must, as soon as possible, report the findings of the investigation to the Scottish Ministers.

(3) A report under subsection (2) above must set out—

- (a) what, in the opinion of the local authority, is the cause of the relevant water quality issue;
- (b) whether, in the opinion of the local authority, the relevant water quality issue constitutes a potential risk to human health; and
- (c) any steps which the local authority intend to require by notice under section 76FB.

(4) On receipt of a report under subsection (2) above the Scottish Ministers may, in relation to the relevant water quality issue, give the local authority a direction as to the exercise of their functions under sections 76FA to 76FC.

(5) In particular, a direction under subsection (4) above may—

- (a) specify any advice which the local authority must require to be given to consumers in relation to the relevant water quality issue by notice under section 76FB(3)(d) below;
- (b) specify any steps which the local authority must require to be taken under section 76FB(3)(b) and (e) below; and

- (c) specify the period which the local authority must require under section 76FB(3)(c) below.
- (6) A local authority must comply with a direction given under subsection (4) above.
- (7) Where a local authority conduct an investigation under subsection (1) above (and the investigation confirms the existence of a relevant water quality issue) the authority may recover the expenses reasonably incurred by the authority in conducting that investigation from the responsible person.

### **76FB Remedial powers of local authorities where domestic distribution failure affects supply to public**

(1) This section applies where a local authority have completed an investigation under section 76FA(1) above.

(2) A local authority must serve a notice on the person who owns or is otherwise responsible for the domestic distribution system of the premises affected by the relevant water quality issue (the “responsible person”) for the purposes of ensuring a wholesome supply and protecting human health.

(3) A notice served under this section must—

- (a) give particulars of the relevant water quality issue in respect of which the notice is served;
- (b) specify any steps which the local authority require to be taken for the purposes of ensuring a wholesome supply and protecting human health;
- (c) specify a period for the performance of each step;
- (d) specify the advice (if any) which the local authority require the responsible person to communicate to consumers of the supply;
- (e) specify any steps which the local authority require to be taken for the purpose of communicating such advice;
- (f) specify a period ending not less than 28 days after the day on which the notice is served within which any representations or objections with respect to the notice must be received by the local authority; and
- (g) state the effect in relation to that notice of section 76FC below.

(4) Where the local authority consider that a relevant water quality issue (including a relevant water quality issue relating to an indicator parameter) constitutes a potential risk to human health, the local authority must—

- (a) require the taking of such steps under subsection (3)(b) above as the authority consider necessary to protect human health; and
- (b) require advice to be given to consumers under subsection (3)(d).

(5) In requiring the taking of such steps as may be necessary to comply with subsection (4)(a) above, the local authority and the Scottish Ministers must take into account the risks to human health which would be caused by an interruption of the supply or a restriction in the use of water intended for human consumption (within the meaning of Article 2.1 of Council Directive [98/83/EC](#) on the quality of water intended for human consumption).

(6) The provisions of section 76G(3) below shall have effect in relation to notices served under this section and the reference to a “relevant person” in that subsection shall be construed as a reference to a “responsible person” for the purposes of this section.

(7) Once the period specified for performance of a step required by a notice under this section has expired, a local authority must notify the Scottish Ministers as soon as possible

of any actions taken by the responsible person and the local authority pursuant to, or in consequence of, the requirement to take the step.

(8) Unless a local authority consider a relevant water quality issue to be of a trivial nature, the authority must take such steps as the authority consider necessary to ensure that consumers are notified of any remedial action taken under, or pursuant to, a notice served under this section.

- (9) In this section “indicator parameter” means a parameter listed in—
  - (a) Part II of Table B in Schedule 1 to the Water Supply (Water Quality) (Scotland) Regulations 2001 (SSI 2001/207);
  - (b) Schedule 2 to those Regulations;
  - (c) Part II of Table B in Schedule 1 to the Private Water Supplies (Scotland) Regulations 2006 (SSI 2006/209); or
  - (d) Table C in Schedule 1 to those Regulations.

**76FC Effect, confirmation and variation of a notice under section 76FB**

(1) The provisions of section 76H(1) to (10) below shall have effect in relation to notices served under section 76FB above subject to the modifications set out in subsection (2) below.

- (2) The modifications to section 76H are—
  - (a) subsections (3)(c), (5)(b) and (5A) do not apply;
  - (b) for “76G” in each place where it occurs substitute “76FB”;
  - (c) for “relevant person” in both places where it occurs substitute “responsible person”;
  - (d) for “76G(2)(c) and (d)” in both places where it occurs substitute “76FB(3)(f) and (g)”;
  - (e) in subsection (5)(a), omit the words “, except where the case is one to which paragraph (b) below applies,”.

(3) Any responsible person on whom a notice is served under section 76FB above, who fails without reasonable excuse to take any step as specified in the notice within the period so specified shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.”.

<sup>F1</sup>3. ....

**F1** [Reg. 3](#) revoked (27.10.2017) by [The Water Intended for Human Consumption \(Private Supplies\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/282\)](#), reg. 1(1), **sch. 10 para. 4(a)** (with reg. 2)

<sup>F2</sup>4. ....

**F2** [Reg. 4](#) revoked (27.10.2017) by [The Water Intended for Human Consumption \(Private Supplies\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/282\)](#), reg. 1(1), **sch. 10 para. 4(a)** (with reg. 2)

5. In section 76L of the 1980 Act (interpretation etc. of Part VIA)—

<sup>F3</sup>(a) .....

- (b) after the definition of “private supply” insert—  
    ““relevant water quality issue” has the meaning given by section 76FA(1) above;  
    “responsible person” has the meaning given by section 76FB(2) above;”.

**F3** Reg. 5(a) revoked (27.10.2017) by [The Water Intended for Human Consumption \(Private Supplies\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/282\)](#), reg. 1(1), **sch. 10 para. 4(a)** (with reg. 2)

### **Amendment of the Water Industry (Scotland) Act 2002**

6. In section 11 of the Water Industry (Scotland) Act 2002 <sup>M6</sup> (enforcement notices: further provisions), after subsection (7) insert—

“(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.”.

#### **Marginal Citations**

**M6** 2002 asp 3.

### **Amendment of the Water Supply (Water Quality) (Scotland) Regulations 2001**

**F47.** .....

**F4** Regs. 7-14 revoked (1.1.2015) by [The Public Water Supplies \(Scotland\) Regulations 2014 \(S.S.I. 2014/364\)](#), regs. 1(1), **50(2)(c)** (with reg. 1(3)(4))

**F48.** .....

**F4** Regs. 7-14 revoked (1.1.2015) by [The Public Water Supplies \(Scotland\) Regulations 2014 \(S.S.I. 2014/364\)](#), regs. 1(1), **50(2)(c)** (with reg. 1(3)(4))

**F49.** .....

**F4** Regs. 7-14 revoked (1.1.2015) by [The Public Water Supplies \(Scotland\) Regulations 2014 \(S.S.I. 2014/364\)](#), regs. 1(1), **50(2)(c)** (with reg. 1(3)(4))

**F410.** .....

**F4** Regs. 7-14 revoked (1.1.2015) by [The Public Water Supplies \(Scotland\) Regulations 2014 \(S.S.I. 2014/364\)](#), regs. 1(1), **50(2)(c)** (with reg. 1(3)(4))

**F411.** .....

**F4** Regs. 7-14 revoked (1.1.2015) by [The Public Water Supplies \(Scotland\) Regulations 2014 \(S.S.I. 2014/364\)](#), regs. 1(1), **50(2)(c)** (with reg. 1(3)(4))

<sup>F4</sup>**12.** .....

**F4** Regs. 7-14 revoked (1.1.2015) by [The Public Water Supplies \(Scotland\) Regulations 2014 \(S.S.I. 2014/364\)](#), regs. 1(1), **50(2)(c)** (with reg. 1(3)(4))

<sup>F4</sup>**13.** .....

**F4** Regs. 7-14 revoked (1.1.2015) by [The Public Water Supplies \(Scotland\) Regulations 2014 \(S.S.I. 2014/364\)](#), regs. 1(1), **50(2)(c)** (with reg. 1(3)(4))

<sup>F4</sup>**14.** .....

**F4** Regs. 7-14 revoked (1.1.2015) by [The Public Water Supplies \(Scotland\) Regulations 2014 \(S.S.I. 2014/364\)](#), regs. 1(1), **50(2)(c)** (with reg. 1(3)(4))

**Amendment of the Private Water Supplies (Scotland) Regulations 2006**

**15.** After regulation 5 of the 2006 Regulations, insert—

**“Duty of relevant person in relation to disinfection**

**5A.** Where a relevant person disinfects a private water supply for human consumption purposes, the relevant person must—

- (a) where necessary, subject the water to sufficient preliminary treatment to prepare the water for disinfection; and
- (b) design, operate and maintain the disinfection process so as to keep disinfection by-products as low as possible without compromising the performance of the disinfection process.”

<sup>F5</sup>**16.** .....

**F5** Regs. 16-19 revoked (27.10.2017) by [The Water Intended for Human Consumption \(Private Supplies\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/282\)](#), reg. 1(1), **sch. 10 para. 4(a)** (with reg. 2)

<sup>F5</sup>**17.** .....

**F5** Regs. 16-19 revoked (27.10.2017) by [The Water Intended for Human Consumption \(Private Supplies\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/282\)](#), reg. 1(1), **sch. 10 para. 4(a)** (with reg. 2)

<sup>F5</sup>18. ....

**F5** Regs. 16-19 revoked (27.10.2017) by [The Water Intended for Human Consumption \(Private Supplies\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/282\)](#), reg. 1(1), **sch. 10 para. 4(a)** (with reg. 2)

<sup>F5</sup>19. ....

**F5** Regs. 16-19 revoked (27.10.2017) by [The Water Intended for Human Consumption \(Private Supplies\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/282\)](#), reg. 1(1), **sch. 10 para. 4(a)** (with reg. 2)

**20.** In regulation 34 of the 2006 Regulations (register of private water supplies) after paragraph (1)(i) insert—

- “(ia) any enforcement notices served by the authority in relation to the supply under section 76FB of the 1980 Act (whether or not confirmed by the Scottish Ministers under section 76FC of that Act), including—
- (i) the particulars of the person on whom the notice was served
  - (ii) the date of service of the notice;
  - (iii) the matters specified in subsection (3) of section 76FB;”

St Andrew's House,  
Edinburgh

*R CUNNINGHAM*  
Authorised to sign by the Scottish Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

<sup>M7</sup>These Regulations amend various instruments to further transpose Council Directive 98/83/EC on the quality of water intended for human consumption (“the Directive”).

<sup>M8M9M10M11</sup>The Directive was first transposed in relation to the public water supply by the Water Supply (Water Quality) (Scotland) Regulations 2001 (“the 2001 Regulations”) and in relation to private water supplies, by the Private Water Supplies (Scotland) Regulations 2006 (“the 2006 Regulations”), the Private Water Supplies (Grants) (Scotland) Regulations 2006 and the Private Water Supplies (Notices) (Scotland) Regulations 2006 .

<sup>M12</sup>Regulation 2 of these Regulations introduces 3 new sections into Part VIA of the Water (Scotland) Act 1980 (“the 1980 Act”). The new sections address the treatment of water quality failures in premises in which water is supplied to the public, where those failures are attributable to the domestic distribution system, e.g. the pipes and fittings, of the premises in question. The new sections refer to this particular type of failure as a “relevant water quality issue”. The sections transpose the requirements of Article 6(2) (together with Article 8) of the Directive.

New section 76FA of the 1980 Act requires local authorities to investigate relevant water quality issues to determine their cause and to report the findings of the investigation to Scottish Ministers. New section 76FB requires local authorities to serve a notice on the person responsible for the domestic distribution system (“the responsible person”), for the purposes of ensuring a wholesome water supply and of protecting human health. The notice must specify the steps which the local authority require the responsible person to take in relation to the relevant water quality issue. New section 76FB also requires local authorities to inform consumers of any remedial action taken under, or pursuant to, a notice served under the section (unless the local authority consider the failure to be trivial). New section 76FC makes provision in relation to the effect of a notice served under section 76FB and introduces an offence of failure to comply with a notice without reasonable excuse. The penalty on summary conviction is a fine not exceeding level 5 on the standard scale.

Regulation 3 amends section 76G of the 1980 Act to prevent a notice being served under both that section and new section 76FB in respect of a relevant water quality issue.

Regulation 4 amends section 76HA of the 1980 Act to modify section 76H in respect of private water supplies, within the meaning of the 2006 Regulations. The modifications introduced by regulation 4 require local authorities, when dealing with a supply which constitutes a potential risk to human health, to require by notice served under section 76G such steps as may be necessary to protect human health. Regulation 5 inserts some relevant definitions into section 76L of the 1980 Act.

<sup>M13</sup>Regulation 6 amends the Water Industry (Scotland) Act 2002 to require the Drinking Water Quality Regulator for Scotland to notify those persons affected by a contravention of a drinking water quality duty (e.g. a failure in water quality) that the public water supplier (i.e. Scottish Water) has rectified the contravention.

Regulations 7-14 amend the 2001 Regulations in consequence of the new sections 76FA-FC of the 1980 Act and to further transpose the Directive. Regulation 7(4) introduces a new paragraph (5A) into regulation 17 of the 2001 Regulations (investigations: Schedule 1 parameters). This requires the water authority (i.e. Scottish Water) to inform consumers where it has identified a failure in water quality which constitutes a potential risk to human health and to provide details of the steps which consumers should take in the interests of their health. Equivalent provision is made by regulation 8(4) in respect of regulation 18 of the 2001 Regulations (investigations: Schedule 2 indicator parameters).



Regulation 9 introduces a new regulation 18A into the 2001 Regulations. This places Scottish Water under a duty to take remedial action in relation to any failure in water quality arising from the public supply system. Where the failure poses a risk to human health (including those circumstances where the risk to health is caused by a failure of an indicator parameter) new regulation 18A requires the water authority to take such action as is necessary to protect human health. Scottish Water is also placed under a duty to inform consumers of any remedial action taken in relation to a supply (unless it considers that the failure was trivial).

Regulation 11 amends regulation 20 of the 2001 Regulations and has the effect of restricting authorised departures to those parameters contained in Table B of Schedule 1 to the 2001 Regulations (chemical parameters) only.

Regulation 13 amends regulation 25 of the 2001 Regulations. It places Scottish Water under an obligation to keep disinfection by- products to a minimum without compromising the performance of the disinfection and to verify the performance of the disinfection process.

Regulation 14 substitutes Tables 2, 3 and 4 in Schedule 3 to the 2001 Regulations.

Regulations 15- 20 amend the 2006 Regulations in consequence of the new sections 76FA- FC of the 1980 Act and to further transpose the Directive. Regulation 15 introduces a duty on the relevant person to keep disinfection by- products to a minimum without compromising the performance of the disinfection.

Regulations 17(6) and 18(7) require local authorities to direct the relevant (or responsible) person to inform consumers of any failure in water quality which constitutes a potential risk to human health.

Regulation 18(2)(b) amends regulation 18(1)(c) of the 2006 Regulations (investigations: Schedule 1 indicator parameters). It has the effect of requiring local authorities to identify whether or not a failure in relation to any parameter in Schedule 1 to the 2006 Regulations is attributable to the domestic distribution system of the premises in question, or to the maintenance of that system. Previously this duty was restricted to failures in coliform bacteria or colony count parameters only. Regulation 19 introduces a new regulation 18A into the 2006 Regulations which requires local authorities to notify consumers of remedial action performed under, or pursuant to a notice served under section 76G of the 1980 Act.

Regulation 20 amends regulation 34 of the 2006 Regulations and requires local authorities to include details of any notices served under new section 76FB of the 1980 Act in a public register.

**Changes to legislation:**

There are currently no known outstanding effects for the The Water Quality (Scotland) Regulations 2010.