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STATUTORY INSTRUMENTS

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**2016 No. 614**

**The Water Supply (Water Quality) Regulations 2016**

**PART 7**

**Investigations, authorisation of departures and remedial action**

**Investigations: Schedule 1 parameters**

**18.**—(1) A water undertaker or combined 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;
- (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) is to apply only in respect of the Schedule 1 parameters (if any) that are not specified in the authorisation;
- (b) every water undertaker or combined 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;
- (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) have been identified, the water undertaker or combined licensee must—

- (a) notify the Secretary of State—
  - (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;
- (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 combined licensee has identified a failure attributable to the domestic distribution system or the maintenance of that system, it must by notice in writing, at the same time as notification is given under paragraph (5), inform any person referred to in paragraph (7) 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.

- (7) The persons that must be informed in accordance with paragraph (6) are—
  - (a) those of its consumers who are likely to be affected by the failure, and
  - (b) 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.

(8) Where a notice is sent in accordance with paragraph (6), a copy of that notice must be sent to the Secretary of State and to each local authority whose area is likely to be affected by the failure.

(9) A relevant supplier which receives a notice under paragraph (6) 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.

(10) A water undertaker or combined 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).

(11) Where such a failure as is mentioned in paragraph (1) relates to the copper or lead parameters (item 10 and 15 in Part I of Table B in Schedule 1), the relevant supplier must, as soon as is 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 combined 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) the reason why the specifications are not met;
- (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 possible after the matters specified in paragraph (1) have been identified, the water undertaker or combined licensee must—
- (a) notify the Secretary of State—
    - (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;
  - (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 attributable to the domestic distribution system or to the maintenance of that system, the water undertaker or licensed water supplier must, at the same time as notification is given under paragraph (2)—
- (a) by notice in writing to any person referred to in paragraph (4), 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;
  - (b) send a copy of that notice to the Secretary of State and to each local authority whose area is likely to be affected by the failure.
- (4) The persons referred to in paragraph (3)(a) are—
- (a) those of its consumers who are likely to be affected by the failure, and
  - (b) 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.
- (5) A relevant supplier which receives a notice under paragraph (3)(a) 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 Secretary of State**

##### **20.—(1) Where—**

- (a) a notification given in accordance with paragraph (5) of regulation 18 in the circumstances mentioned in paragraph (1) of that regulation (including that paragraph as read with paragraph (3)(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 Secretary of State that the failure is not trivial and is likely to recur,
- the Secretary of State 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 from the provisions of Part 3 in accordance with regulation 22.

(2) The exercise by the Secretary of State of the power conferred by paragraph (1) does not preclude the exercise by the Secretary of State of the power conferred by section 18 of the Act(1).

(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 systems or the maintenance of that system, and

(b) it appears to the Secretary of State that the failure in respect of that parameter is not trivial and likely to recur,

the Secretary of State must consider whether to vary the terms of the 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 Secretary of State considers that the inability poses a potential danger to human health, the Secretary of State 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 Secretary of State 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.

(6) On the coming into force of these Regulations—

(a) a notice given under regulation 19(1) of the 2000 Regulations which had effect immediately before the coming into force of these Regulations is taken to be a notice given under paragraph (1) of this regulation;

(b) a notice given under regulation 19(4) of the 2000 Regulations which had effect immediately before the coming into force of these Regulations is taken to be a notice given under paragraph (4) of this regulation.

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

**21.**—(1) Paragraph (3) applies where the Secretary of State considers 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 members of the public, including schools within the meaning of the Education Act 1996(2), hospitals and restaurants,

(b) is not trivial and is likely to recur, and

(c) in the cases 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).

(1) Section 18 was amended by sections 36(2) and 49(2) of, and paragraph 4 of Schedule 8 to, the Water Act 2003 (c.37). It is prospectively amended by paragraph 26 of Schedule 7 to the Water Act 2014 (c.21) from a date to be appointed.

(2) 1996 c.56.

- (3) Subject to paragraph (7), the Secretary of State must 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 licensed water supplier making a supply of water to the premises,

requiring it to exercise the power conferred by section 75(2) of the Act in respect of the failure.

(4) The provisions of section 75(2) to (12) of the Act<sup>(3)</sup> 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 opening words to the end of paragraph (b), there were substituted—
    - “(9) Where, in a case not falling within subsection (7)(a) or (b) above, any steps specified in a notice served by a water undertaker for the purposes of subsection (2)(b) above have not been taken by the end of the period so specified, the water undertaker—
    - (a) must take those steps itself; and
    - (b) subject to subsection (10) below 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 Secretary of State 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 such notice must include a copy of any notice that it has served.

(7) Where the Secretary of State considers 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 licensed water supplier of water supplied by a water undertaker or licensed water supplier—

- (a) the Secretary of State must not serve a notice under paragraph (3) in respect of that failure or aspect of it;
- (b) if the Secretary of State considers that the local authority needs information or assistance from the water undertaker or licensed water supplier in order to be able to carry out its duties under regulation 15 or 16 of the Private Water Supplies (England) Regulations 2016<sup>(4)</sup>, the Secretary of State must serve a notice on the water undertaker or licensed water supplier requiring it to provide such information or assistance to the local authority as is specified in the notice.

(8) The water undertaker or licensed water supplier on which a notice under this regulation has been served must take the steps specified in the notice.

(9) On the coming into force of these Regulations, a notice given under regulation 19A(3) of the 2000 Regulations which had effect immediately before the coming into force of these Regulations is taken to be a notice given under paragraph (3) of this regulation.

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(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) [S.I. 2016/618](#).

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

22.—(1) The Secretary of State may, upon the written application of a relevant supplier, authorise in accordance with regulation 23 a departure from the provisions of Part 3 insofar 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) But the Secretary of State must not authorise a departure under paragraph (1) unless the Secretary of State is satisfied that—

- (a) the authorisation is necessary to maintain in that zone a supply of water for regulation 4(1) purposes,
- (b) a supply of water for those purposes cannot be maintained in that zone by any other reasonable means, and
- (c) the supply of water in accordance with the authorisation does not constitute a potential danger to human health.

(3) Every water undertaker or combined 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;
  - (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;
- (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;
  - (iii) provisions for reviewing the progress of the work and for reporting the results of the review to the Secretary of State.

(4) At the same time as it makes an application for an authorisation under paragraph (1), the water undertaker or combined 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) Public Health England;
- (c) where the water supply zone is wholly or partly in Wales, the National Public Health Service for Wales;
- (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 Secretary of State in connection with the application.

(6) Representations under paragraph (5) must be made within 30 days beginning with the date on which the application for the authorisation is made.

(7) On the coming into force of these Regulations, an authorisation given under regulation 20(1) of the 2000 Regulations which had effect immediately before the coming into force of these Regulations is taken to be an authorisation given under paragraph (1) of this regulation.

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

**23.**—(1) A departure may be authorised under regulation 22 for such period as is in the Secretary of State's 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) But no departure period may exceed 3 years.

(3) Subject to paragraph (5), 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;
  - (ix) the departure period;

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<sup>(5)</sup> Section 219(1) of the Act defines "the Council" as the Consumer Council for Water.

- (b) is to 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) is to require the carrying out of the steps which, in the relevant supplier's 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) is to specify in relation to those steps—
    - (i) the timetable for the work;
    - (ii) an estimate of the cost of the work;
    - (iii) provisions for reviewing the progress of the work and for reporting to the Secretary of State the result of the review;
  - (e) is to 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 Secretary of State is 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 Secretary of State that a supply of water that fully satisfies the requirements of Part 3 cannot be restored by the end of the departure period, the Secretary of State may authorise a further departure.
- (8) Paragraphs (1) to (6) 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 Secretary of State 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 (6), the Secretary of State may, in accordance with Article 9(2) of Council Directive 98/83/EEC on the quality of water intended 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 is to be read as if for “Subject to paragraph (5)” there were substituted “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.
- (12) On the coming into force of these Regulations, any further authorisations given under regulation 21(5) and (7) of the 2000 Regulations which had effect immediately before the coming

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(6) 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).



into force of these Regulations are taken to be further authorisations given under paragraph (7) and (9) of this regulation.

### **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 (5) 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;
  - (ii) in a case to which paragraph (5) of regulation 23 applies, a notice containing a statement of the matters specified in paragraph (3)(a)(ii), (iii) and (ix) of that regulation;
- (b) jointly give such other public notice of the authorisation and of its terms and conditions as the Secretary of State may, by notice served on the specified relevant supplies, reasonably require.

(2) In paragraph (1), “specified relevant suppliers” means relevant suppliers who—

- (a) 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.

### **Revocation and variation of authorisations**

**25.**—(1) Subject to paragraphs (2) and (4), the Secretary of State may at any time revoke or vary an authorisation under regulation 22.

(2) Subject to paragraph (3) the Secretary of State is not to revoke or modify an authorisation under regulation 22 without giving at least 6 months’ notice in writing of the Secretary of State’s intention to do so to—

- (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) Public Health England;
- (e) where the authorisation relates to a water supply zone which is wholly or partly in Wales, the National Public Health Service for Wales;
- (f) the Council.

(3) The Secretary of State may revoke or vary an authorisation under regulation 22 without notice if it appears to the Secretary of State 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 regulation 22 must notify the Secretary of State as soon as the circumstances which gave rise to the application cease to exist, and the Secretary of State must revoke the authorisation without the need for prior notice.

(5) In this regulation, “an authorisation under regulation 22” includes an authorisation for a further or third departure under regulation 23.

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**Status:** *This is the original version (as it was originally made).*

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