

<b>Title:</b> The Water Fluoridation (Proposals and Consultation) (England) Regulations 2013 <b>IA No:</b> 3075  <b>Lead department or agency:</b> Department of Health <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 11/02/2013		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Secondary legislation		
<b>Contact for enquiries:</b> Amit Bose			
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> RPC Opinion Status

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCBon 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£24,600	£0	£0	No
			NA

**What is the problem under consideration? Why is government intervention necessary?**

The Health and Social Care Act 2012 amended the Water Industry Act 1991 to transfer the responsibility for consulting residents on water fluoridation from Strategic Health Authorities to Local Authorities. Water supplies tend to cross local authority boundaries, resulting in co-ordination problems. This can raise the possibility of legal challenges. Government is best placed to mitigate this risk by introducing regulations that set clearly the requirements on local authorities when making proposals about water fluoridation and consulting local residents. The Water Industry Act 1991 places obligations and powers on the Department of Health to lay regulations to this effect.

**What are the policy objectives and the intended effects?**

- 1) Increase democratic accountability of the decision making process for fluoridation, reducing the likelihood of disputes between LAs and the public.
- 2) Minimise the administrative burden on LAs running a consultation.
- 3) Allow LAs to consider fluoridation of water more equitably alongside other public health initiatives

The regulations are about how an LA will notify other affected authorities about fluoridation proposals and consult other organisations and individuals affected by fluoridation proposals. They are not intended to impact the likelihood of fluoridation happening in itself.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

**Option 1:** Do Nothing. Leave the 2005 Regulations as they stand. Doing so provides local authorities with no guidance and process as to how to make proposals and consult other organisations when considering fluoridation of water. Option 1 would also contravene the new regime under the Water Industry Act 1991 which requires the Secretary of State to make regulations governing the notification of other affected local authorities about fluoridation schemes.

**Option 2:** Lay regulations making provision for local authority proposals and consultations on fluoridation. This is the preferred option. This option provides a clear set of requirements for local authorities to follow and minimises administrative burden and the risk of legal challenge where possible. It also offers flexibility for local authorities to perform some parts of the consultation process as they see fit, ensuring local flexibility and minimising costs.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 04/2018					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A	<b>Non-traded:</b> N/A	

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.*

Signed by the responsible Minister: Anna Soubry Date: 13.02.2013

# Summary: Analysis & Evidence

Policy Option 1

Description: Do Nothing

## FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£0	£0	£0

### Description and scale of key monetised costs by 'main affected groups'

These are defined as being zero.

### Other key non-monetised costs by 'main affected groups'

These are defined as being zero.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£0	£0	£0

### Description and scale of key monetised benefits by 'main affected groups'

These are defined as being zero.

### Other key non-monetised benefits by 'main affected groups'

These are defined as being zero.

Key assumptions/sensitivities/risks

Discount rate (%)

The Government is legally obliged under the Health and Social Care Act 2012 to lay regulations relating to the process that local authorities must follow to fluoridate water. Doing nothing places the Government and the Secretary of State in contravention of primary legislation. In addition, doing nothing keeps the likelihood of legal challenge and dispute between local authorities and the public unacceptably high.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0	Benefits: £0	Net: £0	No	NA

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** Implement The Water Fluoridation (Proposals and Consultation) (England) Regulations 2013

## FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:Optional	High:Optional	Best Estimate:0.02

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0.016	0.14

### Description and scale of key monetised costs by 'main affected groups'

Local authorities will need to perform consultations on water fluoridation proposals (£12,000 on average per year) and to publish information to the public about water fluoridation proposals (£3,600 on average per year).

### Other key non-monetised costs by 'main affected groups'

The regulations will potentially increase the administrative burden on local authorities to reach a decision on whether to proceed with a fluoridation proposal. And maintaining fluoridation schemes. It is difficult to assess how local authorities would do these activities in the absence of regulation, so the marginal costs of doing so cannot be monetised.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0.019	0.16

### Description and scale of key monetised benefits by 'main affected groups'

The regulations will reduce the likelihood of legal challenge, dispute and judicial reviews from affected local authorities and the public. The single judicial review that has taken place on water fluoridation since 1985 cost £350,000, or an equivalent average cost of £18,800 per year. This cost would be reduced under the regulations.

### Other key non-monetised benefits by 'main affected groups'

The regulations also ensure local flexibility, allowing local authorities to minimise administrative burdens where possible. They ensure local democratic accountability as they ensure decisions affecting local residents take place at a local level. Introducing a minimum 20 year period between consultations on proposals to terminate fluoridation schemes ensures stability for water companies and better value for money.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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It is assumed the likelihood of a local authority seeking to consult residents on fluoridating water does not change if these regulations are implemented. It assumes that any consultation on water fluoridation in the future could involve a legal challenge and possibly judicial review.

## BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0	Benefits: £0	Net: £0	No	NA

## Evidence Base

### Problem under consideration

1. Water fluoridation is the controlled addition of fluoride to a public water supply to reduce tooth decay. Fluoridated water occurs naturally in all water supplies but generally needs to be supplemented to reach the one milligram per litre optimum level for reducing tooth decay. For the purposes of this Impact Assessment (IA), fluoridation is the process of adding fluoride to the local water supply.
2. Currently 5.5 million people in England drink fluoridated water. The following areas have artificially fluoridated water: Workington, Newcastle upon Tyne, Crewe, Mansfield, Lincoln, Birmingham, most of the West Midlands and Bedford.
3. There are many areas in England, which have significant natural fluoride content in drinking water. These include Norwich, Ipswich, Cambridge, Hartlepool, Slough, Bath, Swindon, Colchester and parts of the counties of Essex, Norfolk, Suffolk, Durham, Shropshire, Wiltshire and North East London.
4. At the moment, the responsibility for running consultations and contracting for fluoridation sits with Strategic Health Authorities (SHAs). The Health and Social Care (HSC) Act (2012) abolishes SHAs and transfers the responsibility for proposing and conducting consultations on fluoridation schemes and determining their outcome from SHAs to Local Authorities (LAs). Therefore, the current regulations that govern processes in this area will no longer be valid.
5. This Impact Assessment takes into consideration evidence collected from a consultation ran by the Department of Health in September-November 2012. The consultation received 136 responses and confirmed that fluoridation is controversial with both supporters and opponents of fluoridation acknowledging that consultations and decision making on fluoridation proposals need to be evidence-based and transparent.

### Rationale for intervention

6. The HSC Act prescribes that the Department *must* make some and *may* make other regulations setting out details on how the responsibilities for fluoridation consultation must be carried out by local authorities. Annex 1 contains more details on these powers in the HSC Act.
7. The water supply in England does not correspond to the boundaries of local authorities. Often a local water supply system will entirely span some LAs and also include areas from within the boundaries of other LAs<sup>1</sup>. The design of the water distribution system means that if a local authority wanted to consider fluoridating the local water supply several other LAs would most likely be

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<sup>1</sup> See, for instance, <http://www.ofwat.gov.uk/consumerissues/watercompanies/map/>

affected. This can create complex decision-making structures in which there may be no consensus among the affected LAs on how to progress a fluoridation proposal.

8. Government is best placed to set parameters as it is the only body that can make regulations prescribing the process for LAs to follow when working on a water fluoridation proposal. A suitably specific set of regulations around how consultations are run and decisions on fluoridation are made should reduce as far as possible the possibility of disputes, and any legal challenge to a decision.

### **Policy Objective**

9. The policy objective is to ensure that any decisions on water fluoridation by LAs take into account the full benefits and costs in that area in a democratically accountable way. This will minimise the likelihood of any disputes and thereby reduce the administrative burden on LAs of any consultation process.
10. The policy does not intend to influence the likelihood of LAs considering the fluoridation of their water supplies. It will be for LAs to decide whether to consult on fluoridation. Subject to that consultation feedback it will also be for LAs to decide whether to fluoridate the water in a local area. Local authorities may consider that, after assessing the dental health needs of their local population and taking account of responses to the consultation, they wish to address those needs by other public health initiatives than through fluoridation. In this instance fluoridation regulations will have no long-term impact.

### **Description of options considered**

11. The options considered in this Impact Assessment are
  - a. Option 1: Do nothing; leave the regulations as they stand.
  - b. Option 2: Lay regulations on the process local authorities follow in consulting and making decisions on fluoridation proposals. These regulations are called The Water Fluoridation (Proposals and Consultation) (England) Regulations 2013.

#### **Option 1: Do Nothing**

12. Under this option no regulations specifying the detail for local authority consultations on fluoridation will be laid. This option is incompatible with the Health and Social Act 2012 as the Act requires the Secretary of State for Health to make regulations. Annex 1 contains more information on which areas require regulation following the HSC Act.

#### **Option 2: Lay regulations on the process for local authority consultation on fluoridation**

13. This is the preferred option. Under Option 2 the following regulations will be made which maximise the scope for local authorities to exercise their discretion in conducting consultations. They will also set parameters for decision intended to reduce the scope for dispute and administrative overheads. These regulations will apply to England only.

### *Area 1: Reaching a decision on whether to consult*

#### Arrangements for decision-making

14. The proposing local authority will be required to provide sufficient information to allow any other affected local authorities to make a decision on whether to proceed to a consultation. The regulations will require the local authority to respond to requests for further information.

#### Conditions on the decision to proceed

15. Where there is no consensus all decisions involving more than one local authority on fluoridation proposals should be determined by voting with each LA's votes weighted by the population of the areas of the LA that would be affected by the proposal. Based on each LAs weighted votes, a super-majority (two-thirds) of affected local authorities is needed to proceed.

### *Area 2: Committee membership and procedures*

16. The regulations will place no conditions on the membership of a decision-making committee. The regulations have no minimum or maximum membership size or require a different approach depending on the number of local authorities involved. This can be left to the discretion of the LAs.

### *Area 3: Fluoridation decision-making, consultation procedure and assessing public opinion*

#### Notification of a Consultation

17. The regulations will impose the same notification requirements on LAs as on Strategic Health Authorities, with the exception that the SHA requirement to notify local authorities of a consultation will no longer apply.
18. It is important to stress SHAs are required to consult their residents about a fluoridation proposal. Under Option 2 this requirement will still apply for local authorities.

#### Information provided to the public

19. The regulations will impose the same requirements on local authorities as applied to SHAs.

#### Assessment of balance of public opinion

20. The regulations will not impose any specific procedural requirements in relation to how the local authority evaluates public opinion.

#### Reaching a decision on whether to proceed with a fluoridation proposal

21. The regulations will prescribe different requirements on local authorities about how a decision will be reached. For example, a local authority or joint committee must in determining whether to proceed with a fluoridation proposal should:
  - a. have regard to the views of the population (and the extent of support for the proposal), the Joint Strategic Needs Assessment and Health and Wellbeing Strategy of the affected areas;

- b. have regard to the strength of any scientific evidence or ethical arguments advanced in relation to the proposal.
- c. consider the capital and operating costs financial implications of a fluoridation proposal; and
- d. consider any other available scientific evidence in relation to the proposal including any evidence of benefit to the health and wellbeing of individuals who would be affected by the proposal

#### *Area 4: Variation of terms and maintenance of arrangements*

##### Circumstances where the Secretary of State may vary arrangements without a request from a local authority

22. The regulations will give the Secretary of State powers to vary or terminate a fluoridation scheme without a local authority proposal where, against all experience, water fluoridation is found to pose a serious risk to the health of the population.

##### Variation of terms

23. The regulations will replicate the current provisions by prescribing that the establishment of a joint committee and conduct of a consultation for a variation proposal is not required if:
- a. it does not concern the boundary of an area to which arrangements relate; or
  - b. it does concern the boundary of an area, but the number of houses that would be affected by the variation, either by being brought within the area or by being excluded from it, exceeds 20% of the number of houses within the area at the time the request is made and this variation occurs within the proposing local authority. In circumstances where more than one local authority is affected by the variation, those local authorities must come to agreement to proceed with the variation.
24. Implementation would not need to be through the joint committee process but would be subject to local agreement.

##### Maintenance of existing arrangements

25. The regulations will replicate the existing provision, that is, consultation is required for maintaining fluoridation arrangements if it involves the upgrading or replacement of fluoridation plant other than for the purpose of meeting operational requirements and health and safety standards.

##### Termination of fluoridation schemes (timescales)

26. The regulations will state there will be a minimum term of 20 years between consultation proposals on the termination of schemes.

##### **Criteria for assessing the options**

27. This section assesses the options against the policy objectives and intended effects.

**Does the preferred option increase democratic accountability of the decision making process, reduce the likelihood of a disputes brought by the public (including Judicial Review), and minimise administrative burden?**

28. Under the Do Nothing Option, there is a risk that a local resident can challenge the legality of local authority decision on fluoridation. The regulations seek to support local democratic decision-making and limit the possibility for judicial review by setting out the appropriate amount of detail on procedures that LAs must follow when considering fluoridating water supplies
29. Plans to fluoridate water supplies in the Southampton region<sup>2</sup> in 2009 led to a judicial review on behalf of a local resident. South Central SHA won the review but the project was delayed by 18 months and cost South Central SHA £350,000. Before this, the last fluoridation scheme in the UK was set up in 1985.

**Does the preferred option minimise the likelihood of disputes between LAs minimising administrative burden?**

30. The HSC Act states the proposing local authority must notify other affected local authorities and enable all affected LAs to decide whether further steps will be needed<sup>3</sup>. Furthermore, the HSC Act requires by regulation provisions and conditions for the proposer to achieve this. Specifically, the regulations must set out details on:
- a. how the proposing local authority should enable affected authorities to decide whether further steps should be taken in relation to the proposal; and
  - b. any conditions which must be satisfied before any further steps may be taken in relation to the proposal.
31. By placing these requirements in statute, the regulations in Option 2 seek to mitigate the risk of disputes between local authorities. In doing this, this should minimise the administrative burden.

**Does the preferred option minimise the administrative burden on LAs of running a consultation?**

32. The Department intends to use the regulations to restrict the administrative burden to reasonable levels by defining the parameters on which decisions on fluoridation are taken. In some areas the regulations prescribe statutory requirements that are identical to those applied to Strategic Health Authorities. Where the area of the water supply is within the area of a single local authority the LA will be able to proceed with fluoridation consultations by itself. In this scenario the proposing local authority will incur similar costs to the Strategic Health Authority.
33. However, as most water supply areas extend beyond the boundary of a single LAs considering fluoridating their local water supply will need to consult with other LAs, (whereas an SHA may have been able to 'go-it-alone' in the past), there will be additional costs to LAs which the regulations seek to minimise

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<sup>2</sup> See Annex 2 for more details on the Southampton fluoridation programme.

<sup>3</sup> Section 88D, subpara 2 and 3.



through the joint committee approach. Beyond this the regulations give LAs widediscretion to adopt the approach that is most suitable to them.

**Does the preferred option increase the likelihood that the LAs will maximise the health benefit to the local population, through taking into account the full set of costs and benefits in deciding whether to fluoridate?**

34. In setting out requirements for consultation and democratic decision-making, the regulations will support a process in which all the relevant evidence is gathered and considered by all the relevant local authority staff and elected members when deciding on consultations for a new fluoridation scheme, varying the terms of an existing fluoridation scheme or terminating it. This creates a situation where the potential health gain from fluoridation is considered against the cost of other measures available aimed at improving oral health (including the opportunity cost of the next best project in which the LA could have invested).

**Benefits and Costs of Option 2**

35. The benefits and costs of these regulations are considered holistically rather than based on each individual requirement. This is to avoid repetition of costs and benefits. The benefits of the regulations are explained first, followed by the costs.

**Benefits**

*Improved democratic accountability*

36. The regulations have the positive benefit of improving democratic accountability. This is consistent with other government policies that encourage decision-making to take place in local areas. For instance, the requirement for a super-majority of the votes of all affected LAs (weighted, based on local populations) should best ensure that the decision reflects the overall costs and benefits of implementing water fluoridation. These benefits cannot be monetised and so are unquantified.

*Local flexibility*

37. The regulations have the benefit of local flexibility through the discretion they give LAs. This benefit applies particularly to the composition of committee members and the assessment of public opinion after a public consultation. This means the proposing local authority can implement these proposals in a way it chooses and it is expected that it will do so in a way that the LAs consider suits local circumstances. This has an impact as well on reducing unnecessary administrative burdens, though compared to the Do Nothing option the reduction in administrative burden cannot be considered a benefit. The benefits of local flexibility have not been monetised and so are unquantified.

*Reduced likelihood of legal challenge*

38. These regulations prescribe specific requirements on the process for consulting other LAs and the public on water fluoridation proposals. This process means the threat of legal challenge is reduced as the requirements the LA must follow are set in statute based on the experience of past

consultations and the way in which they were challenged at judicial reviews. An indication of the cost savings from this is below.

39. As discussed in paragraph 29, the last two proposals for fluoridation occurred in 2009 (in Southampton) and in 1985 (in the West Midlands). At this rate, this implies the likelihood of a local area considering water fluoridation is approximately 4.2% per year. We assume that if the Do Nothing option is pursued, all future fluoridation schemes will be subject to legal challenge. Under Option 2, the likelihood of future judicial reviews on water fluoridation is reduced. Using the figure above, the maximum likelihood of a Judicial Review on fluoridation in any one year is 4.2%.
40. A judicial review places costs on three parties:
- a. the defendant (historically the SHA but under Option 2 will be the LA);
  - b. The resident/LA launching the challenge (who may receive legal aid); and
  - c. The justice system itself.
41. The judicial review that occurred in Southampton cost the local SHA £350,000 in 2009. Using ONS data on consumer prices index to up-rate the costs to today's prices, this equates to £360,000 in 2013 prices<sup>4</sup>. The legal costs on the individual claimant raising the judicial review were not known. As a conservative estimate in this Impact Assessment in this case it is assumed the legal costs on the individual claimant were around one quarter of the legal costs on the defendant. Where the claimant is successful their legal costs would normally be met by the losing defendant.
42. The judicial review also places a cost on the court system as well as legal costs on the individual applying for a legal challenge and court fees apply accordingly. The court fees for applying for and continuing a judicial review are £470 in total. This Impact Assessment assumes that overall court fee income aims to cover overall court costs, and that where necessary court fees may be adjusted to deliver court cost recovery. If court fees happened not to recover court costs completely for particular types of case then there may be wider benefits from a reduction in the volume of such cases.
43. Assuming each future judicial review costs a similar amount, the maximum potential benefit from reducing judicial reviews is £18,800 per year<sup>5</sup>. Assuming the default length of this policy is ten years and future streams of benefits are discounted at 3.5% each year, this gives a maximum present value of this saving as £162,000.

#### *Stability for water suppliers*

44. Setting a minimum interval of 20 years between consultations on terminating a fluoridation scheme gives water companies stability in their operations by knowing that short-term decisions will not be made over fluoridation of water. While the costs of fluoridation to water companies will be reimbursed by LAs,

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<sup>4</sup> Source: <http://www.ons.gov.uk/ons/rel/cpi/consumer-price-indices/december-2012/cpi-and-rpi-reference-tables.xls> , Table 32.

<sup>5</sup> Calculated as  $(£360,000 + (£360,000 \times 0.25) + £470) \times 4.2\%$

this has an effect of ensuring value for money for the water company (and the LAs, as reimbursers) that the machinery to ensure fluoridation is used efficiently. This is an important aspect as setting up fluoridation schemes are costly and therefore the setting of some regulatory requirements, with which LAs have to comply, is vital. This benefit has not been quantified.

## Costs

### *Administrative burden*

45. Local authorities may incur costs from:
  - a. Providing information to other local authorities on when proposing to fluoridate
  - b. Publishing details of a fluoridation proposal
  - c. Conducting a consultation on the proposal
  - d. Reaching a decision on whether to proceed with fluoridation proposal
  - e. Maintaining fluoridation schemes
  
46. When reaching a decision on whether to proceed with fluoridation, it is important to consider the fact that where more local authorities are involved the risk of legal challenge may be higher. The benefit of having a set of defined requirements on how multiple LAs reach a decision (and the reduction in risk of legal challenge as a result) will outweigh the increased administrative burden.
  
47. However, these requirements are already set out in the HSC Act, so in reality the burden should be assigned to the primary legislation. Local authorities should consider to minimise these costs as far as possible while still seeking to fulfil their duties. It is expected that, when considering public health policies to pursue, that the costs of administration are included in their appraisal of policies<sup>6</sup>. Local authorities, therefore, will only seek to implement fluoridation of water if they perceive the benefits of doing so exceeding the costs, including administrative costs.
  
48. As above, this impact assessment states the likelihood of any local authority seeking to fluoridate water remains the same at 4.2% per year. On this basis, the cost of any fluoridation scheme have not been quantified as they are considered to be negligible.

### *Running a consultation*

49. The regulations will retain the existing provisions with one revision<sup>7</sup> around consultation processes to minimise any potential administrative burden on LAs. The regulations will not remove all requirements as this might increase the likelihood of disputes between LAs as well as the local population lacking information and feeling unable to make representations. The cost incurred by LAs if they choose to consult on fluoridation should not differ significantly from

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<sup>6</sup> For instance, a local authority may choose to hold a referendum on fluoridating water in the local area. Data from the regulations on the Alternative Vote referendum in 2011 found the average cost on local authorities being approximately £200,000 each.

<sup>7</sup> That the local authority be notified of a consultation taking place. As LAs take over this function, they will be aware of any consultations that take place.

the cost SHAs would have incurred under the current system. Therefore, any savings that SHAs make from no longer requiring to perform consultations will be counterbalanced by costs on LAs to perform the consultations instead.

50. As an illustrative indication of the scale of these costs, evidence from the most recent fluoridation consultation programme in Southampton found the cost of consultation was estimated at £382,000 (not including costs of legal challenge.) This equates to £434,000 in 2013 prices.
51. One respondent to the consultation stated that the consultation on fluoridation in the West Midlands in 1985 operated between three District Health Authorities. The cost of the consultation was estimated to be around £50,000-£75,000. Up-rating the costs to today's prices, this is equivalent to £130,000-£190,000. There is no reason to suggest local authorities will perform this function at significantly higher cost.
52. Taking the average of the two scenarios gives an estimated cost of running a consultation at £297,000 (in 2013 prices.) Applying the same 4.2% likelihood probability from the Benefits section implies an average annual cost of £12,400. The ten year present value of this is £107,000, using the same 3.5% discount rate as applied in the Benefits section.

*Publishing information for the public*

53. As an illustration of the costs a local authority may incur in publishing information for the public, we use estimates from Southampton on the costs of publicising the consultation to residents. This came to approximately £76,000 (or £86,000 in 2013 prices). Applying the 4.2% likelihood probability as above implies an average cost of £3,600. The ten year present value of this cost is £31,000.
54. Local Authorities are subject to the Equalities Act 2010, which means that they have several obligations toward people with protected characteristics when running a public consultation. These obligations continue to run here and therefore any costs incurred in providing this information would strictly fall under the implementation of the Equalities Act 2010.

**Summary of costs and benefits**

55. The costs and benefits of Option 2 are explained in Table 1.

<b>Benefits</b>	<b>Annual Costs</b>	<b>10 year Present Value</b>
Improved democratic accountability	Positive and unquantified	Positive and unquantified
Local flexibility in implementation	Positive and unquantified	Positive and unquantified
Reduced risk from legal challenge	£18,800 (average)	£162,000
Stability for water companies	Positive and unquantified	Positive and unquantified
<b>Costs</b>		

Administrative burden	Negligible	Negligible
Running a consultation	£12,400 (average)	£107,000
Publishing information for the public	£3,600 (average)	£31,000
<b>Total Benefits</b>	<b>At least £18,800</b>	<b>At least £162,000</b>
<b>Total Costs</b>	<b>£16,000</b>	<b>£137,000</b>
<b>Net Benefit</b>		<b>£24,000</b>

Table 1: Summary of benefits and costs for Option 2

## Rationale and evidence that justify the level of analysis in the IA (proportionality approach)

56. The costs and benefits incurred in this Impact Assessment have been quantified as far as possible. Option 2 sets out the parameters for LAs to use when considering fluoridation of water. As part of this it is expected LAs will take all the costs and benefits of fluoridation into account when deciding whether to adopt it as a public health initiative. These costs and benefits include the costs of running a consultation, the costs of contracting with a water supplier and the benefits of fluoridation into consideration when thinking about a fluoridation policy.
57. Some of these impacts have been considered in this Impact Assessment but others have not. This is because the costs of contracting with a water supplier and the benefits of fluoridation occur under both Option 1 and Option 2. The regulations in Option 2 do nothing to alter the scale of those impacts.
58. Another factor influencing the proportionality of analysis in this Impact Assessment is the likelihood of a water fluoridation proposal emerging in any given year. There was a 24 year gap between the last two consultations on fluoridation proposals, so the likelihood of one happening in any given year is low. The impacts described in this Impact Assessment will be realised in the years when a fluoridation proposal is considered.

## Risks and assumptions

59. It is assumed that placing legal requirements on local authority for the process of consulting relevant organisations on fluoridation does not make fluoridation any more or less likely<sup>8</sup>. There is an additional risk that complexity of decision-making or lack of sufficient guidance will change the status quo.
60. The impact assessment stresses a risk under the Do Nothing option that disputes and legal challenges would almost certainly arise over the process for deciding on whether to consult and fluoridate the local water supply in accordance with regulations that were no longer valid. The preferred option argues that the likelihood of a judicial review ever happening on water fluoridation will be reduced by updating the regulations, but the risk remains that it cannot be eradicated.

<sup>8</sup> A discussion on whether giving LAs the responsibility for fluoridation makes fluoridation more or less likely would have been considered as part of the HSC Act.

## **Direct costs and benefits to business calculations (following OITO methodology)**

61. The regulations are solely about how to consult. We expect no impact on the likelihood of fluoridation itself and no impacts on water companies or other private organisations<sup>9</sup>.
62. These regulations concern local authorities and how they interact with each other and the public in relation to fluoridation. Therefore the private sector is not directly affected by these regulations. The only time the private sector is involved in the consultation process is when a local authority wanting to fluoridate the water of a local area must obtain a quote from the local water company as well as an assessment that fluoridation would be feasible in an area. This is similar to how any other business bids for work. If a local area decides to go ahead with fluoridating the water supply it is expected that the water company will provide the fluoridation according to the price agreed through negotiations. The LAs will reimburse the water company with the full costs of fluoridation. Therefore there will be no net cost to business.
63. Current legislation on fluoridation states that water companies must fluoridate the water of a local area (if it is feasible) upon request of the relevant authority. This will impose costs on the water company, for which they would be fully reimbursed. However, as these regulations do not make water fluoridation more or less likely, the net cost to business will also be zero. On this basis, we consider the regulations to be outside of the scope of the One In Two Out methodology.

## **Wider impacts**

### **Economic / Financial**

64. These regulations will have no impact on the market, consumers or businesses. This includes micro businesses. Under the new regulations, water suppliers will continue to have to fluoridate the local water supply if requested to do so by a relevant authority. This is a continuation of the current system. Evidence suggests that there are no water suppliers that could be classed as micro businesses. These regulations do not limit competition or in any other way change the working conditions for water undertakers.
65. The benefit arising from the preferred option in reducing the likelihood of disputes between LAs and the public will therefore have a positive impact on the justice system.

### **Social**

66. The proposals will not alter the positive impact on social wellbeing or health inequalities as the frequency of fluoridation is not expected to change by these regulations. However, fluoridation has the potential to reduce inequalities in oral health, by seeking to increase the likelihood that the LAs will maximise the health benefit to the local population, through taking into account the full set of costs and benefits in deciding whether to fluoridate and

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<sup>9</sup> Private organisations may wish to respond or participate in fluoridation consultations but their decision to do so is purely voluntary.

by increasing democratic accountability these regulations may positively impact on health inequalities. Additionally, local authorities will also have responsibility for a range of other public health areas. It is expected any decisions in maximising the health of the local population will actively consider fluoridation, without the fear of legal challenge from the public of other LAs.

### **Environmental**

67. This policy has no impact on the emission of Greenhouse Gases.

### **Justice**

68. This policy is expected to reduce judicial activity as one of the key benefits is a reduction in the risk of legal challenge. In this sense, it is expected to have a positive impact on the justice system.

### **Summary of options**

69. Overall the package of regulations outlined in Option 2 best satisfy the policy objectives and intended effects These are to:

- a. Increase democratic accountability of the decision making process, reducing the likelihood of disputes brought by the public, and minimising administrative burden;
- b. Minimise the likelihood of disputes between LAs, minimising administrative burden;
- c. Minimise the administrative burden on LAs of running a consultation;
- d. Increase the likelihood that the LAs will maximise the health benefit to the local population, through taking into account the full set of costs and benefits in deciding whether to fluoridate

## Annex 1: List of regulations that must and may be laid

Policy themes	Policy detail with cross reference to the relevant section of the Water Industry Act 1991 (as amended by the Health and Social Care Act 2012)	Status of Regulations
<b>Theme A:</b> Participation in decision-making by affected local authorities	<p><u>For a new consultation / fluoridation proposal (Section 88D)</u></p> <ul style="list-style-type: none"> <li>• Detail how the proposing local authority should enable affected authorities to decide whether further steps should be taken in relation to the proposal</li> <li>• Prescribe conditions which must be satisfied before any further steps may be taken in relation to the proposal</li> </ul> <p><u>For a variation or termination proposal (Section 88K)</u></p> <ul style="list-style-type: none"> <li>• Prescribe conditions which must be satisfied before any further steps may be taken in relation to the proposal</li> <li>• Detail how the proposing local authority should enable affected authorities to decide whether further steps should be taken in relation to the proposal</li> </ul>	Regulations <u>must</u> be laid
<b>Theme B:</b> Fluoridation decision-making, consultation procedure and assessing public information.	<p><u>Sections 88E and 88L</u></p> <ul style="list-style-type: none"> <li>• Specify the steps taken for the purpose of consulting in relation to fluoridation proposal</li> <li>• Detail in regulations circumstances where a modification of a proposal to extend the boundary of the area covered is acceptable</li> <li>• Specifying factors that the proposer/committee must or may take into account in making the decision whether to ask the Secretary of State to proceed with a proposal</li> <li>• Specifying the procedure to be followed in exercising functions related to the points above.</li> </ul>	Regulations <u>may</u> be laid
<b>Theme C:</b> Variation of terms and termination of schemes	<p><u>Sections 88I, 88K, 88L and 88M</u></p> <ul style="list-style-type: none"> <li>• The circumstances when the Secretary of State can request a water undertaker to terminate a scheme without a request from the affected local authorities.</li> <li>• Prescribe the length of time between proposals to terminate a fluoridation scheme may be made. The Secretary of State may specify circumstances where the proposer does not need to make arrangements to inform other local authorities and/or form joint committees (in relation to termination/variation only)</li> <li>• The Secretary of State may specify circumstances where the proposer does not need to consult on a proposal to vary a fluoridation scheme.</li> <li>• Regulations may make provision requiring the Secretary of State to terminate a scheme if the affected LAs do not want it to continue.</li> </ul>	Regulations <u>may</u> be laid
<b>Theme D:</b> Maintenance of schemes	<p><u>Section 88O</u></p> <ul style="list-style-type: none"> <li>• The Secretary of State may specify the circumstances for consulting and ascertaining opinion on whether fluoridation schemes should be maintained and for establishing arrangements to allow LAs to propose that schemes be maintained.</li> </ul>	Regulations <u>may</u> be laid



## Annex 2 – Southampton Fluoridation Scheme

The number of people covered by the Southampton fluoridation scheme within individual local authority boundaries is as follows. Please note all figures are based on population estimates and therefore are approximate:

- a. Southampton City – 160,000
- b. Eastleigh Borough Council – 25,065
- c. New Forest District Council – 8,264
- d. Test Valley Borough Council – 1,431

The map below outlines the areas in Southampton and south west Hampshire where fluoridation would occur.

