



Department
for Environment
Food & Rural Affairs

Consultation on the drinking water regulations 2016

Summary of responses and government response

May 2016



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Contents

Introduction	1
Overview of responses	2
Summary	2
Water Supply (Water Quality) Regulations 2016	3
Question 1: Are there any aspects of the new monitoring requirements for radioactive substances where you require further clarity?.....	3
Question 2: Are there any aspects of the new technical requirements for radioactive substances where you require further clarity?.....	3
Question 3: Do you have any comments in relation to the proposed reduction in waiting time for bringing in new supplies?	4
Question 4: Do you have any comments in relation to the amendments to the storage of records and information?.....	4
Question 5: Do you have any comments in relation to the proposed amendments to improve the clarity of the Water Supply (Water Quality) Regulations?	4
Question 6: Do you have any general comments you wish to make on the proposals for the draft Water Supply (Water Quality) Regulations 2016?.....	5
Private Water Supplies (England) Regulations 2016	6
Question 1: Are there any aspects of the new monitoring requirements for radioactive substances where you require further clarity?.....	6
Question 2: Are there any aspects of the new technical requirements for radioactive substances where you require further clarity?.....	7
Question 3: Do you have any comments in relation to widening the existing exemption in regulation 3(1)(b) for crop washing so that it covers water used in any food production process, so long as the wholesomeness of the foodstuff is not affected?	7
Question 4: Do you have any comments in relation to the requirements to undertake a risk assessment and monitoring on private water supplies that are part of a commercial activity?	7
Question 5: Do you have any comments in relation to the requirements to undertake a risk assessment for new supplies?.....	8
Question 6: Do you have any comments in relation to the proposed amendments to improve the clarity of the regulations?.....	8

Question 7: Do you have any comments in relation to the charging of fees as set out in schedule 5? 8

Question 8: We should be grateful for any general comments you wish to make on the proposals for the draft Private Water Supplies (England) Regulations 2016? 9

Government response..... 10

Annex A: List of respondents (organisations) 14

Introduction

This document provides a summary of responses to Defra's consultation exercise on the Drinking Water Regulations. The consultation ran from 1 February to 14 March 2016. A total of 59 responses were received.

The Water Supply (Water Quality) Regulations 2000 (as amended) (S.I 2000/3184) and the Private Water Supplies Regulations 2009 (as amended) (S.I 2009/3101) transpose Council Directive 98/83/EC on the quality of water intended for human consumption in relation to water provided by water companies and licensed water suppliers and private water suppliers respectively. They also supplement the provisions set out in Chapter 3 of the Water Industry Act 1991 (the "1991 Act"). Local authorities have duties under sections 77 to 85 of the 1991 Act relating to private water supplies and are also responsible for enforcing the Private Water Supplies Regulations 2009 (as amended). The Drinking Water Inspectorate (DWI), acting on behalf of Defra's Secretary of State, enforces the Water Supply (Water Quality) Regulations 2000 (as amended).

A six week consultation was carried out on draft Regulations which would revise and revoke the public and private supplies Regulations. The proposed amendments clarify and consolidate the content of the previous Regulations and transpose Council Directive 2013/51/Euratom in respect of new EU monitoring requirements for radioactive substances, in particular radon. Minor amendments have also been made to make the Regulations more readily understandable. This is in keeping with the Government's commitment to better regulation.

In addition, the Regulations for private supplies introduce a change to require new private supplies of water and supplies that have been out of use for more than 12 months, to be risk assessed by local authorities as soon as is reasonably practical. This means that the quality of a new private supply will now be assessed sooner to ensure that the water is safe and not harmful to health, rather than the assessment being left for up to five years as is currently the case.

There are also two changes in the Regulations for public supplies. The first is a reduction in waiting time from three to one month for the DWI to process risk assessments for new sources of water. This will increase efficiency for water companies and give greater confidence in the security and continuity of their water supplies. The second clarifies the data records that need to be maintained by water companies by including a specific reference to electronic records in the existing list of data requirements. This will ensure that any electronic records collected are kept for the same length of time as other specified data records.

Overview of responses

As part of the consultation we sought views from respondents on six questions for the draft Water Supply (Water Quality) Regulations 2016 and eight questions for the draft Private Water Supplies (England) Regulations 2016.

Over 700 organisations in England were contacted directly by email to alert them to the consultation. The consultation was also promoted on GOV.UK.

A total of fifty nine responses were received; fifteen specifically for the Water Supply (Water Quality) Regulations 2016 and forty two for the Private Water Supplies (England) Regulations 2016; with another two responses covering both sets of Regulations. The breakdown of responses was as follows:

- thirty four from local authorities;
- eleven from water companies;
- four from private businesses;
- four from private individuals;
- three from universities/scientific organisations;
- two from public bodies; and,
- one from a professional body.

Three respondents requested their response remain confidential.

Summary

There was general support for the draft Regulations. The majority of comments from respondees were in relation to further clarification and guidance.

Summary of responses by question

Water Supply (Water Quality) Regulations 2016

Question 1: Are there any aspects of the new monitoring requirements for radioactive substances where you require further clarity?

10 respondents provided comments.

The suggested approach and the proposed methodology was welcomed as it was consistent with the risk based approach required by water safety plans; as described in Chapter 4 of the [World Health Organization Guidelines for Drinking Water Quality](#). There was appreciation for the use of other relevant surveillance programmes thereby permitting multiple methods to be used in risk assessments. Clarity was requested regarding regulation 6(11) and the issue of waivers by the Secretary of State in relation to the low risk areas identified by the recently published Ricardo-AEA report¹.

Question 2: Are there any aspects of the new technical requirements for radioactive substances where you require further clarity?

5 respondents provided comments.

The parametric value of 100Bq/l for radon was felt to be appropriate. It was suggested that an additional footnote relating to radon should be added to Schedule 3, table 2. In addition, the reference in Schedule 4 to Council Directive 96/29/Euratom, for calculation of Indicative Dose, should be updated to refer to Council Directive 2013/51/Euratom. There was disappointment for a missed opportunity to adopt the World Health Organization guideline values for radioactive screening; especially in relation to gross-alpha due to low concentrations of natural uranium. Caution was requested in the interpretation or

¹ Ricardo-AEA led a fourteen month study in collaboration with Public Health England (PHE) and the British Geological Survey (BGS) – ‘Understanding the Implications of the EC’s Proposals Relating to Radon in Drinking Water for the UK: Final Report’. The aim of the project was to provide risk-based information to Defra and the UK Drinking Water Regulators to help them understand the implications for the UK of adoption of Council Directive 2013/51/Euratom.

publication of exceedances of the screening values as these could be misrepresented and misinterpreted.

Question 3: Do you have any comments in relation to the proposed reduction in waiting time for bringing in new supplies?

9 respondents provided comments.

The majority of responses supported the reduction in waiting time from three months down to one month as this will allow for greater flexibility in terms of water supply arrangements. It was felt that suitable protection of water supplies is still afforded by the over-arching risk assessment process. One respondent queried the need for even one month. Clarity for the terms 'new sources' and 'new supplies' was requested as regulation 15 uses the terms interchangeably. Clarity and consistency for these terms was also requested within the Regulations to establish whether there were equal requirements for bulk supplies.

Question 4: Do you have any comments in relation to the amendments to the storage of records and information?

10 respondents provided comments.

There was general support for this proposal. Concern was raised about the possible implications, including financial, of this proposal. There was a general request for clarification and definition of the terms used. Clarification was specifically requested for the term "electronic monitoring" in regulation 34(1)(g), as this could be widely interpreted and lead to inconsistencies across the industry. The term "online monitors", used in the consultation document, was felt to be a more suitable term. Additional clarification was requested to define the terms "particulars" and "customer contacts" in regulation 34 (1) (h). It was also suggested that clarification was needed in relation to routine customer information requests under regulation 35 and the extent and scope of the information made available to customers in response to these requests. The advantages for retaining records and information for five years were acknowledged. However, there was concern as to whether this contradicted the requirement of the Data Protection Act 1998 in respect of keeping data "no longer than necessary". Issues of IT capacity were also raised.

Question 5: Do you have any comments in relation to the proposed amendments to improve the clarity of the Water Supply (Water Quality) Regulations?

12 respondents provided comments.

It was suggested that in regulation 4(6), '12 months' should read 'calendar year' in line with the consultation document. In addition, certain provisions for serving notices should be discretionary as it was felt that the current proposal was over burdensome and does not reflect what happens in practice. Notices should only be issued for the prevention of danger to human health and not just compliance for wholesomeness. For regulation 30(1)(b), there was concern over the line "or is likely to contain" as, due to the multiple factors involved, this is difficult to quantify. There were requests to remove or reword "owner's intention to replace so much of the pipe as belongs to him", under regulation 30 (1)(a)(ii), to require property owners to have completed their work before the company is required to complete any pipe replacement.

Question 6: Do you have any general comments you wish to make on the proposals for the draft Water Supply (Water Quality) Regulations 2016?

16 respondents provided comments.

These included:

- The request that the correct and consistent spelling for *E. coli* is used throughout the Regulations and that a definition for *E. coli* is provided in regulation 2 'Interpretations'.
- Questioning whether there was a requirement to undertake source/supply risk assessments to consider the effect on the distribution system and end users where supplies originate from variable or combined sources (part surface/part borehole).
- Suggesting that notifications should be provided to end users when the sourcing of their supplies is switched between supply zones that have a wide variance in parameters (pH, hardness/softness, etc.).
- For clarity, a potential redrafting to link regulations 2 and 8.
- Further clarity around the Secretary of State's authorisation for revocations under Regulation 8(1), 8(4) and 8(8) was requested.
- The confusing interchanging use of the terms "relevant supplier" and "water undertaker".
- Clarification of the use of the terms "adequate treatment process" and "sufficient preliminary treatment" in regulation 26 was sought so that it is clear what is actually required.

- A suggestion that owners should be required to have ‘completed’ the work for which they are responsible as opposed to just providing the ‘intention’ to do so in respect of replacing pipework under regulation 30.
- A query about the proposed application of offences under regulation 33.
- Suggested amendments to the values in Table A2 in Schedule 5.
- A request for a definition of “service reservoir”.

Private Water Supplies (England) Regulations 2016

Question 1: Are there any aspects of the new monitoring requirements for radioactive substances where you require further clarity?

28 respondents provided comments.

Suggestions for further simplifying the Regulations were received. There was also a request for further and more detailed guidance to help local authorities interpret and implement the Regulations. This would enable them to make informed decisions when considering the presence of any radioactive parameters and to provide consistent and systematic reporting to the DWI. It was felt that more detailed mapping was needed to help more readily identify the level of radon risk for an area and establish the baselines for drawing up a risk based approach to monitoring of radon/radioactive parameters. Further guidance and training was also requested for the taking of samples.

It was suggested that local authorities’ initial monitoring strategy also consider seasonal variability to consider the future impacts of climate change. It was also felt that in order for the local authority to provide the DWI with the grounds for a decision to exclude a supply from sampling, under the terms of regulation 11 (8), that this process form part of the risk assessment reviews and be submitted with the annual data return to DWI as opposed to providing individual reports. Further definitions for commercial and single dwellings were requested as well as clarification of the guidance for monitoring of single dwellings in the light of the risk to the consumer.

Identifying and accessing suitable laboratories was also raised as well as local authorities’ ability to recoup the full cost of laboratory fees. It was suggested that monitoring and analysis should only be undertaken by laboratories with at least ISO-17025 accreditation. The capacity of laboratories to undertake additional analysis of water samples for radon was also mentioned.

Question 2: Are there any aspects of the new technical requirements for radioactive substances where you require further clarity?

25 respondents provided comments.

It was suggested that a list of accredited laboratories capable of carrying out the required testing be made available e.g. published on the DWI website. Local authorities were concerned that if there were no laboratories in close proximity, this could add to the cost of the work and might compromise the samples as they would not be tested within the required time scales.

Question 3: Do you have any comments in relation to widening the existing exemption in regulation 3(1)(b) for crop washing so that it covers water used in any food production process, so long as the wholesomeness of the foodstuff is not affected?

19 respondents provided comments.

There was support for the widening of the exemption under regulation 3(1)(b). Further guidance and definitions were requested in respect of “the referred authority”, “wholesomeness”, as well as the types of food production that would be excluded.

Question 4: Do you have any comments in relation to the requirements to undertake a risk assessment and monitoring on private water supplies that are part of a commercial activity?

25 respondents provided comments.

Further guidance was requested regarding the risk assessment and monitoring of private water supplies that are part of a commercial activity. There was confusion as to how to classify these supplies which had led to an inconsistent approach across local authorities. Definition and guidance was especially requested for commercial activity and the wording of regulation 8, ‘*Further distribution of supplies from water undertakers or licensed water suppliers*’. Clarification was requested in guidance about how risk assessments should be applied to individual properties. There were also requests for further guidance on the length of rentals and the wording of “responsibility”. One respondent felt the scope of the Regulations should incorporate temporary supplies for ‘temporary events’ as these events were nationwide and were often attended by tens of thousands of people. There was

concern that these Regulations did not take the opportunity under Article 3(b) of Council Directive 98/83/EC for providing exemptions in respect of regulation 10 supplies (other private supplies).

Question 5: Do you have any comments in relation to the requirements to undertake a risk assessment for new supplies?

32 respondents provided comments.

Respondents welcomed this proposal as a sensible and proportionate approach. It was felt that the proposed changes would provide local authorities with a mandate to become involved at a preliminary stage, especially with planning and building control to ensure wholesomeness of water and manage the risks to public health. The majority of respondents were concerned as to how new supplies would be identified when there was no legal requirement for owners of private water supplies to alert local authorities. Concerns were also raised about the potential significant resources for identifying and assessing new supplies and the enforceability of the proposed changes. There was also some confusion about those supplies not having been in use for more than 12 months, erroneously interpreting this to mean that new sources could not be brought into use for a 12 month period.

Question 6: Do you have any comments in relation to the proposed amendments to improve the clarity of the regulations?

21 respondents provided comments.

Several respondents welcomed the redrafted regulation 5(1) which would allow a more practical approach to water safety for treatment systems. Comments were received on regulation 5(2) believing it to be inappropriate in a private water supply context. Regulation 16 was considered too prescriptive with regulation 16(3) viewed as not as flexible as the existing provision and regulation 16(5) removing local authority discretion for issuing notices. There was also a call for further clarity on a number of definitions such as “commercial activity”, “public activity”, “distribution system” and “domestic premises”.

Question 7: Do you have any comments in relation to the charging of fees as set out in schedule 5?

29 respondents provided comments.

The majority of comments concerned the maximum level of fees local authorities are permitted to charge. It was felt that these were not sufficient for recovering the costs of sampling and the carrying out of analysis, particularly in the case of regulation 10 sampling. There were suggestions for the use of hourly rates for risk assessment and sampling visits and setting numerical 'levels' of fees rather than the actual monetary amounts; the amounts could then be published separately. There was a request to separate regulation 11 (monitoring for radioactive substances) and audit fees to prevent misunderstanding and for the inclusion of a small charge for local authorities to recoup costs for the review of risk assessments. A higher maximum level of fee for regulation 9 supplies (large supplies and supplies as part of a commercial activity) was suggested to reflect the general increased complexity of commercial and public supplies covered by this regulation. One respondent suggested revised wording for subparagraph 1(i) of Schedule 5 as they felt that it was open to misinterpretation.

Question 8: We should be grateful for any general comments you wish to make on the proposals for the draft Private Water Supplies (England) Regulations 2016?

32 respondents provided comments.

There were general expressions of support for the Regulations. Clear and concise guidance in support of the Regulations would be welcome along with further clarification and definition of a number of terms. References in the Regulations for the presence of aluminum, iron and manganese were felt to be erroneous as these metals are common in ground water sources. Other respondents requested flexibility for applying notices under section 80 of the Water Industry Act 1991 in instances of failure of compliance due to exceedance of levels for these metals. A suggestion was made to move iron and manganese from the "national requirements" in Schedule 1 to Part 2 Table C to allow for greater flexibility. It was also suggested that the monitoring of onward distribution systems should be the responsibility of the water provider and not the local authority. In line with other environmental health legislation it was felt the safety of the supply in the Regulations should fall to the water supplier or landlord rather than local authority. It was also suggested that some of the wording in the Regulations might be in conflict with the Regulators' Code. One respondent raised concerns about the standard of works carried out on supplies in the absence of an approved contractor assurance scheme. The registration of new boreholes was also suggested. It was felt that unless the local authority sampling officer detected an unusual taste or odour, further testing in this respect would be disproportionate, especially given the costs of laboratory analysis. For regulation 18(d), the wording was considered imprecise as the original quality is not a defined factor.

Government response

We are grateful for the comments that we received in response to the consultation and set out below our response. The draft Regulations will be laid in Parliament as soon as possible under the negative resolution procedure. Updated guidance will also be published by the DWI.

Water Supply (Water Quality) Regulations 2016

Guidance

The DWI's guidance will be updated to include:

- The risk assessment and monitoring requirements for radon in drinking water, including explanations for changes to the monitoring requirements for tritium and Indicative Dose – ID (previously referred to as Total Indicative Dose – TID) and guidance on actions to be taken in the event of a failure;
- Introducing new (or unused) sources under regulation 15;
- Providing risk assessments that cover risks of unwholesomeness as well as risks to human health;
- The requirements for water treatment to minimise contamination from pipes under regulation 29;
- The requirements concerning the replacement of lead pipes under regulation 30;
- New requirements for the storage of records and information by water companies, to ensure that all electronic records, and records of consumer contacts, including telephonic records, are retained for the same length of time as other records.

New Supplies

The introduction of new sources into supply is part of a water company's proactive water resource planning. We feel a month is a reasonable timescale to allow the DWI to consider and respond to the risk assessment report for a new source. Different requirements exist and processes are already in place for emergency situations. Regulation 15 does relate to new sources, unless, for example, the new supply is a housing development falling under inset arrangements. This will be clarified in DWI guidance.

Regulations

The following amendments will be made to the Water Supply (Water Quality) Regulations 2016.

Regulation	Comment
Regulation 2 'Interpretations'.	The spelling for <i>E. coli</i> has been corrected throughout the Regulations. As the definition for <i>E. coli</i> is well understood and the parameters are not being individually defined, no definition will be provided for <i>E. coli</i> in regulation 2 'Interpretations'. The definition for "relevant supplier" in the Regulations is a water undertaker or licensed water supplier.
Regulation 2 and 8 - discrepancy in wording.	The regulation 2 definition of "supply point" has been amended to: 'which the Secretary of State authorises under regulation 8 for the purposes of regulation 6.'
Regulation 6(4) - incorrect reference to paragraph (2)(b).	Regulation 6(4) has been corrected to read paragraph (3)(b).
Regulation 6(11): Waivers	The DWI wrote to water undertakers and water supply licencees on 14 March 2016 to seek views specifically on their proposed approach for managing radioactivity noticing (monitoring waivers) in accordance with the proposals for the Water Supply (Water Quality) Regulations 2016. The DWI will take account of the responses in drawing up their guidance.
Regulation 30(1)(b) - Clarification that this regulation is covered by the requirements of regulation 18(11).	Regulation 30(1)(b) is covered by the requirements of regulation 18(11) and regulation 30(1)(b) is to be amended to read 10ug/l.
Schedule 5, Table A2	Corrected to read: trihalomethanes, trueness and precision '25%'; and, Turbidity (4 NTU), trueness, precision and LoD '10%'.

Private Water Supplies (England) Regulations 2016

Guidance

General guidance on the Private Water Supplies (England) Regulations 2016 will be updated to include:

- Interpretation of commercial activity.
- Advice for those supplies used solely for toilet flushing.
- Clarification that local authorities should provide advice on their website that all new supplies must be registered with them and that anyone failing to do so will be served a notice under section 85 of the Water industry Act 1991. Failure to comply with such a notice is an offence.

In addition the DWI will publish a list of accredited laboratories on their website. To support sector-specific training they will also develop a revised sampling procedures manual to cover radioactive substances monitoring. Additional guidance will be produced to help interpret monitoring results

Radon Maps

The maps in the Ricardo- AEA report provide an initial indication of risk. The DWI has in addition provided local authorities with individual hazard ratings, from the Ricardo-AEA study, for each source in their area. This will help local authorities to ascertain risk of supplies exceeding the permitted value for radon.

Fees

The DWI will be considering further the charging of fees by local authorities as set out in Schedule 5 of the draft 2016 Regulations. They aim to collaborate with local authorities to better understand the situation with a view to revising Schedule 5 at the earliest opportunity.

Regulations

The Regulations have been drafted taking account of the latest quantified evidence available and maintenance of public health. With this in mind, exemptions have not been provided in respect of regulation 10 supplies.

The following amendments will be made to the Private Water Supplies (England) Regulations 2016.

Regulation	Comment
Regulation 2 - Definition of a private water supply.	The definition of “private water supply” has been included into regulation 2. The definition of domestic purposes is set out in section 218 of the Water Industry Act 1991. Powers of entry are provided by section 84 of the Water Industry Act 1991, with section 85 requiring any person to provide a local authority with the necessary information to carry out their duties.
Regulation 13 - single domestic dwellings.	Regulation 13 has been amended so that the new requirement applies to single domestic dwellings in the same way as the other regulations (i.e. not required unless requested).
Regulation 16 - discretion for serving notices.	Regulation 16 has been revised to allow relevant persons 28 days to remediate water supplies which have been found to be unwholesome, where the failure is not due to the domestic distribution system, or it is and the water is made available to the public before enforcement action is required. This allows some discretion and removes the need for a notice where the relevant person is compliant.

Annex A: List of respondents (organisations)

Affinity Water

Babergh and Mid Suffolk DCs

Barnsley MBC

Bath & North East Somerset Council

Breckland Council

Broadland Council

Chartered Institute of Environmental Health

Cornwall Council

Cotswold District Council

Craven District Council

Devon Water Practitioner Group

East Hertfordshire District Council

Eden District Council

Epping Forest District Council

Euro Environmental Containers

First Environment Limited

Gloucestershire Private Water Supply Group

IntelliScience UK Ltd

Kirklees Council

Leeds City Council

Mendip District Council

Newark & Sherwood District Council

Northumberland County Council

Pendle Council

Plymouth University

Public Health England

Severn Trent Water

Shakesby and Sons Ltd

Society of Radiological Protection

South Kesteven District Council

South Lakeland District Council

South West Water

Southern Water

Suffolk Coastal and Waveney DC's

Telford and Wrekin Council

Thames Water

Tonbridge & Malling Borough Council

United Utilities

Water UK

Wessex Water

West Berkshire & Wokingham Environmental Health and
Licensing Service

West Somerset Council

Wiltshire Council

Worcestershire Regulatory Services

Yorkshire Water Services