

30 July 2007

Circular Letter: WSP 7/07

To – each City and County Manager and Director of Services (Water Services).

EUROPEAN COMMUNITIES (DRINKING WATER) (NO.2) REGULATIONS 2007

I am directed by the Minister for the Environment, Heritage and Local Government to refer to Circular Letter (Ref. WSP5/07) dated 14th March 2007 regarding the European Communities (Drinking Water) Regulations 2007 (S.I. No. 106 of 2007). In the absence of appropriate legal authority, no provision was made in those Regulations for indictable offences, and they therefore provided only for summary offences. Following enactment of the European Communities Act 2007, the earlier Regulations have been revoked and replaced by the European Communities (Drinking Water)(No. 2) Regulations 2007 (S.I. No. 278 of 2007). A copy of the revised Regulations has been issued to you with Circular Letter Ref. WSP6/07.

The revised Regulations effectively replicate the provisions of the Regulations made on the 14 March, but with the addition in Regulation 22 of provision for indictable offences. They also revise the implementation date for the revised parameters for fluoridated water supplies set out in Part 1, Table B of the Schedule, to synchronise implementation with related Fluoridation of Water Supplies Regulations (S.I. No. 42 of 2007) issued by the Department of Health and Children.

This Circular provides a summary of the requirements of the new Regulations. While it paraphrases many of the provisions of the Regulations, it should however, be read in conjunction with the actual text of the Regulations. The guidance is set out under subject headings rather than strictly following the layout of the Regulations, for ease of understanding.

The Environmental Protection Agency (EPA) is preparing separate, interim guidance on operational requirements of the Regulations, which will issue shortly. In addition, the implementation working group referred to in the previous circular continues to meet.

BRIEF SUMMARY OF THE REGULATIONS

The new Regulations largely replicate the 2000 Drinking Water Regulations, and provide also for the following significant additional provisions:

- The EPA now supervises sanitary authority water supplies, but sanitary authorities will continue to supervise all other supplies.

- Actual monitoring of all supplies continues to be a function of sanitary authorities, but their monitoring programmes are now subject to approval by the EPA.
- The EPA has powers of enforcement to ensure that sanitary authorities comply with their monitoring obligations.
- Supervisory authorities are required to undertake periodic audits of all water supplies to ensure compliance with the regulations (as carried out at present by the EPA on sanitary authority supplies).
- It will in future be a duty of the water supplier to inform consumers of remedial action taken.
- Supervisory authorities have powers of direct intervention to carry out necessary remedial works themselves if necessary, and recover their costs from the water supplier.
- Intervention in the event of a health risk in a water supply will be subject to agreement with the Health Service Executive (reflecting existing arrangements in practice).
- Supervisory authorities are required to keep a register of water suppliers under their supervision.
- Sanitary authorities are required to keep up to date records on monitoring results, and make them available to the public.
- Registers/records may be kept in electronic format (such as on a website).
- Water suppliers are required to maintain records of any incidents, and, as directed by their supervisory authority, in relation to their operations generally, and make them available to their supervisory authority;
- Offence provisions now apply to all water suppliers;
- Additional offence provisions are included, in relation to -
 - failure to inform supervisory authorities of incidents or comply with directions,
 - failure to maintain records or inform consumers of incidents,
 - failure to keep the internal pipe network in premises supplying water to the public in safe condition.
- Provision is made for prosecution of offences both summarily and on indictment.

APPLICATION OF THE REGULATIONS

The Regulations effectively apply to the same water supplies as the 2000 Regulations. In summary, they apply to all water supplies (whether supplied from a distribution network, a private source or a tanker or similar means) except -

- natural mineral water as defined in the European Communities (Natural Mineral Waters, Spring Waters and Other Waters in Bottles or Containers) Regulations 2007 (S.I. No. 225 of 2007),
- water supplied in bottles or containers,
- waters which are medicinal products (within the meaning of EU Council Directive 65/65/EEC of 26 January 1965),
- individual supplies of less than 10 cubic metres a day on average or serving fewer than 50 persons, provided that those supplies are not used

in a commercial or public activity (such as a hotel or similar commercial outlet, for example), and

- supplies used solely for purposes in respect of which (in the view of the relevant supervisory authority) the quality of the water could have no influence whatsoever on the health of consumers.

The Regulations apply also to all water used in food production (whether in manufacturing, processing, preserving or marketing) unless the supervisory authority is satisfied that the quality of that water cannot affect the wholesomeness of the foodstuff in its finished form.

SUPERVISORY AUTHORITY

Regulation 3 defines the term “supervisory authority”. It provides that the Environmental Protection Agency (the Agency) is the supervisory authority for drinking water supplied by a sanitary authority (county or city council) or any person acting jointly with it or on its behalf. Each sanitary authority is the supervisory authority for all other drinking water supplies in its area (subject to agreed local arrangements between authorities where a supply straddles functional area boundaries, in accordance with Regulation 7(3)).

Regulation 7(4)(b) provides that each supervisory authority shall be responsible for enforcement of compliance with the Regulations by the water suppliers under its remit, and shall take all necessary measures to ensure that monitoring is carried out on the water supplies for which it has supervisory responsibility. (This is complemented by Regulation 7(2), which places primary responsibility on sanitary authorities for actually undertaking monitoring in the first instance – see below.)

Under Regulation 15, the actions of a supervisory authority are subject to the overriding principle that measures taken by it (or a water supplier) to apply the provisions of these Regulations shall in no case have the effect of allowing, directly or indirectly, either any deterioration in the existing quality of drinking water (so far as that is relevant for the protection of public health) or an increase in the pollution of water used for the production of drinking water.

OBLIGATIONS ON WATER SUPPLIERS

Regulation 4 requires all water suppliers to ensure that their water supply is wholesome and clean, and that it meets the requirements of these Regulations. Water which is “wholesome and clean” is defined as water which -

- is free from any micro-organisms and parasites and from any substances which in numbers or concentrations, constitute a potential danger to human health, and
- meets the quality standards specified in Tables A and B in Part 1 of the Schedule.

In addition, water suppliers are required under Regulation 9 to comply with any direction given to them by their supervisory authority for the purpose of preventing, limiting, eliminating or abating any risk to public health in their supply.

The provisions of the new Regulations in relation to requirements to prepare and implement remedial action plans (Regulation 10) are similar to the 2000 Regulations, and are set out later in this Circular. Where remedial action is taken in relation to a water supply, the water supplier is required under Regulation 10(9) to inform consumers, unless the relevant supervisory authority considers that the incident is trivial in nature or extent.

Regulation 13, as with the 2000 Regulations, obliges each water supplier, when providing new water treatment or distribution networks, to ensure that no substances or materials, or any related impurities, remain in drinking water in higher concentrations than is necessary for the purpose of their use, and that they do not in any event reduce the level of health protection afforded by the Regulations. It also obliges each water supplier to ensure that, where disinfection is part of the treatment or distribution process, the efficiency of the disinfection treatment is verified and that any contamination from disinfection is kept as low as possible subject to the disinfection process not being undermined. Supervisory authorities are empowered to issue binding directions in relation to compliance with these obligations.

Regulation 15 provides that any action taken by a water supplier under the Regulations must not under any circumstances result in a deterioration (whether directly or indirectly) of existing drinking water quality or an increase in the pollution of waters used for the production of drinking water. This also replicates earlier provision in the 2000 Regulations.

Obligations in relation to record-keeping are addressed under a separate heading below.

MONITORING

Each sanitary authority is obliged under Regulation 7(2) to monitor all water supplies in its functional area to which the Regulations apply, by whomsoever supplied. For this purpose it must specify points at which samples shall be taken for analysis.

As with the 2000 Regulations, each sanitary authority is obliged to establish a related monitoring programme in accordance with Regulation 7(5). In addition, however, it is now obliged to submit the monitoring programme to the Agency at such times as the Agency may direct. Each sanitary authority has already been issued with an interactive database under the Drinking Water National Monitoring Programme, which will help to generate the necessary monitoring programmes. Regulation 7(6) enables the Agency to issue binding directions to a sanitary authority, requiring such amendment to the authority's monitoring programme as the Agency may specify.

Where a water supply straddles the boundaries of two or more sanitary authorities, Regulation 7(3) provides that they may decide between them that one will undertake monitoring of the entire supply. The chosen authority will thenceforth function as the sole supervisory authority for that supply, in accordance with the definition of "supervisory authority" in Regulation 3.

Monitoring is necessary for parameters which are specified in Part 1 of the Schedule of the Regulations. In addition, supervisory authorities are required under Regulation 7(10) to ensure that monitoring is carried out on a case by case basis of other substances or micro-organisms for which no standards are set, but where there is reason to suspect that they may be present in sufficient quantity to pose a potential public health risk.

Sanitary authorities should note in particular the requirement under Table C in Part 1 of the Schedule to ensure, in relation to a water supply that originates from or is influenced by surface water, where there is a non-compliance with the indicator parameter value for *Clostridium perfringens* (including spores) that the supply is investigated to ascertain that there is no potential danger to human health arising from the presence of pathogenic micro-organisms such as *Cryptosporidium*. Protection of public health is addressed in greater detail later in this Circular.

The Agency is required under Regulation 7(12) to supervise the performance by each sanitary authority of its monitoring functions, and may issue such directions as it considers appropriate to a sanitary authority to ensure that the authority is complying with its monitoring obligations, and that the authority is complying with its obligations as a supervisory authority under the Regulations. The Agency is also obliged under Regulation 7(1) to verify compliance of monitoring results in sanitary authority supplies to ensure compliance with the standards set down in the Regulations.

PROTECTION OF PUBLIC HEALTH

Regulation 9 provides that where a supply of water is considered to be a risk to human health follow-up action must be undertaken in consultation with the Health Service Executive (HSE). Responsibility to ensure that follow-up action is taken lies with the relevant sanitary authority in the first instance, whether in relation to its own supplies or a water supply under its supervision. The Regulation obliges the sanitary authority in the first instance, subject to the agreement of the HSE, to ensure that use of the relevant supply is prohibited or restricted, and that consumers are informed promptly and given any necessary advice. Where a sanitary authority supply is involved the authority must also inform the Agency promptly. Contact arrangements with the Agency and the HSE should be put in place immediately (if not already in place), and be reviewed by the sanitary authority at regular intervals to ensure that they are up to date.

An additional obligation is placed on each supervisory authority (i.e the Agency or relevant sanitary authority as the case may be) under Regulation 9(2), subject to the agreement of the HSE, to issue such directions to the water supplier as it considers necessary to prevent, limit, eliminate or abate the risk. Water suppliers are in turn obliged to comply with any such direction.

REMEDIAL ACTION

General

Regulation 10(1) requires each sanitary authority to ensure that each non-compliance with quality standards set out in Part 1 of the Schedule is

immediately investigated by the relevant water supplier. This is intended to apply both in relation to a sanitary authority's own supplies and those for which it has supervisory responsibility. If the non-compliance is in the sanitary authority's own supply then it must be investigated by the sanitary authority. However, if it is in another supply for which the sanitary authority has supervisory responsibility then it should be investigated by that water supplier in the first instance. The onus is on the sanitary authority to ensure that such investigation is carried out, and the Regulations provide for related powers of direction for this purpose.

To facilitate supervisory intervention, Regulation 10(2) places a related obligation on all water suppliers to inform their supervisory authority when they themselves discover a non-compliance. Thus, each sanitary authority must inform the Agency as soon as it discovers a non-compliance in its water supplies (whether through routine monitoring or otherwise), subject to any guidelines which will be issued by the Agency for this purpose.

Requirements in relation to the undertaking of remedial action are similar to those which applied under the 2000 Regulations, but with responsibility for specific actions by supervisory authorities and water suppliers now more clearly set out. Regulation 10(4) specifies the intervention necessary for the purposes of remedial action. Supervisory authorities are required to ensure that remedial action is taken by the relevant water supplier as soon as possible. However, the supervisory authority must prioritise its interventions having regard to the extent to which standards have been breached and human health put at risk.

Regulation 10(4)(c) provides that within 14 days of receiving an adverse monitoring result in a water supply for which it has supervisory responsibility, the relevant sanitary authority must direct the water supplier to –

- prepare an action programme to secure compliance with the Regulations,
- submit it to the authority for approval within 60 days, and
- implement it as soon as possible but not later than -
 - one year from the date of its approval by the sanitary authority in relation to quality standards specified in Tables A and B in Part 1 of the Schedule where risk to human health arises, or
 - two years from the date of its approval by the sanitary authority in relation to quality standards specified in Table B in Part 1 of the Schedule, where risk to human health does not arise.

The requirement to direct that an action plan should be prepared within 14 days is subject to any alternative requirements which the EPA may include in guidelines issued by it under Regulation 10(8). That Regulation enables the Agency to issue binding guidelines in relation to the nature and timing of remedial, enforcement and other action under Regulation 10 in specified circumstances, depending on the extent and likely consequences of a non-compliance.

Such an action programme is also required where indicator parameters in Table C of Part 1 of the Schedule are breached, but only where the supervisory

authority considers that the non-compliance poses a risk to human health. In considering whether or not a non-compliance poses a risk to human health, the supervisory authority should consult with the HSE.

Action programmes must specify appropriate interim measures, and must have regard to the provisions of any strategic water supply plan made by the sanitary authority for the area in question. This requirement refers essentially to the sanitary strategic plans which each authority will be required to make under the Water Services Act in due course. However, some sanitary authorities have already prepared rural water plans, which should be taken into account in the meantime.

A supervisory authority may, before approving a proposed action programme which has been submitted to it, amend the programme as it considers appropriate.

Sanitary Authority Water Supplies

Each sanitary authority acting as a water supplier is similarly required to submit an action programme to the Agency in relation to its own water supplies where remedial action is necessary, and is subject to the same obligations in this regard as any other water supplier under these Regulations.

Duty to Inform consumers

The onus of informing consumers of any remedial action taken in relation to a water supply falls on the relevant water supplier in the first instance. However for practical operational purposes, Regulation 10(9) provides that such action is unnecessary where the supervisory authority indicates that the non-compliance is of a trivial nature.

RECORDS TO BE MAINTAINED BY WATER SUPPLIERS

Regulations 8(1) and 10(10) place specific record-keeping obligations on sanitary authorities.

Regulation 8(1) enables the Agency (supervisory authority) to direct a sanitary authority (water supplier) to keep such records as it may specify, and to submit such information to it (in such manner and at such times and in such circumstances) as it may direct in relation to –

1. management and treatment of water intended for human consumption,
2. monitoring of compliance with water quality standards,
3. corrective action taken following a non-compliance, and
4. verification of the efficiency of disinfection treatment.

The sanitary authority has similar powers for the purposes of its supervision of private supplies. Each supervisory authority (the Agency or sanitary authority) is required to carry out such verification as it considers necessary on the records maintained under Regulation 8(1).

Regulation 10(10) requires each sanitary authority, in its role as a water supplier, to maintain a record of any incidence of non-compliance with the quality standards in Part 1 of the Schedule, including –

- the date of each incident
- the extent and duration of the failure
- the cause of the failure, and
- details of any complaint received arising from such failure.

Records under Regulation 10(10) must be made available to the supervisory authority if and when it so requests.

RECORDS TO BE MAINTAINED BY SUPERVISORY AUTHORITIES

Regulation 8(3) requires each supervisory authority to maintain a register of all water supplies which it supervises. It specifies that the minimum details to be maintained in the register for each supply are:

- the name and address of the water supplier,
- the volume of water supplied per day (expressed either in cubic meters or a population equivalent),
- the type of water treatment in place,
- the source of the water supply,
- the zone code allocated under the Drinking Water National Monitoring Programme (as referred to in the Department of the Environment, Heritage and Local Government circular letter, Reference WSP11/04, dated 17th December 2004), or where a zone code has not been allocated, such code as the relevant sanitary authority may subsequently allocate to the supply (for monitoring purposes)

MONITORING RECORDS

Regulation 8(4) requires each sanitary authority to maintain up to date records on an ongoing basis of monitoring results relating to the quality of its own water supplies and all other water supplies for which it has supervisory responsibility. In effect, existing arrangements for the maintenance of records for the purpose of reporting monitoring results to the Agency will continue to apply, subject to any guidance by the Agency on the issue.

RECORDS TO BE MADE AVAILABLE TO THE PUBLIC

Regulation 8(7) requires supervisory authority registers, and sanitary authority monitoring records to be made available to the public for inspection during normal office hours. The records in question must be kept at a main office, and where hard copy extracts are provided, a reasonable charge for the cost of making such a copy may be made.

Regulation 8(9) enables the Minister to issue guidelines on maintenance of records in electronic form to facilitate public access. The Minister has indicated his desire that access to monitoring data in particular be made available electronically at an early date. Consideration is being given to appropriate arrangements for this purpose, and a further Circular will issue on this aspect of the Regulations.

ENFORCEMENT

Supervisory authorities have significantly enhanced enforcement powers compared to those provided for in the 2000 Regulations:

- Regulation 16 enables a supervisory authority to give such binding directions as it considers appropriate for the purposes of fulfilling its functions.
- Regulation 19 provides for the power of authorised persons to enter premises for the purposes of their functions under the Regulations, and to bring with them such persons and equipment, and, to carry out such work as they consider necessary.
- Powers of summary prosecution under Regulation 22, and powers under Regulation 18 to obtain injunctive relief in the High Court where a person fails to comply with a direction or a requirement under the Regulations.
- Regulation 12 enables a supervisory authority to intervene directly to provide such assistance or support to a water supplier as it considers appropriate. Note, however, that the supervisory authority must consult with the water supplier in advance of making such an intervention.

Where a supervisory authority considers that a breach of the Regulations is sufficiently serious, it may refer the matter to the Director of Public Prosecutions for consideration of whether a prosecution should be taken on indictment.

In addition, Regulation 12(2) enables a supervisory authority to intervene directly, where a water supplier fails to comply with a direction under Regulation 12(1) for the purpose of achieving compliance with the water quality standards of the Regulations or to comply with a direction under Regulation 9 for the purposes of public health protection. In such circumstances the supervisory authority may itself undertake any necessary action (or arrange for such action to be carried out) as it considers necessary to achieve compliance with its requirements. The costs of such intervention may be recovered from the water supplier as a simple contract debt in any court of competent jurisdiction.

It is envisaged that the power of direct intervention under Regulation 12(2) would be used only as a last resort, in the event of continued refusal to comply with the requests of a supervisory authority, or where direct and urgent intervention is necessary in the interests of protecting public health (where for example a water supplier is unable to rectify a particular problem in the water supply).

Sanitary authorities should have regard to the full range of possible interventions open to them to ensure compliance with the Regulations. Enforcement action should generally be pitched at the appropriate level necessary to achieve compliance.

DUTIES IN RELATION TO WATER ON PREMISES

Under the 2000 Regulations, the onus was on the sanitary authority in the first instance to take the necessary steps to ensure that, where a breach of water quality standards in a premises where water is supplied to the public was attributable to the internal plumbing of the premises, remediation was carried out. The new Regulations transfer this duty of care to the owner of the premises

affected in the first instance; although the sanitary authority is in turn still obliged to ensure that effective remedial action is taken promptly.

Regulation 6(1) provides that water suppliers shall not be in breach of their obligation to provide clean and wholesome water where the cause of the non-compliance is identified as the internal plumbing of the premises where the sample is taken. Under Regulation 6(2), the owner of any premises where water is supplied as part of a commercial or public activity (including but not limited to schools, hospitals and restaurants) is obliged to maintain the internal plumbing of the premises in such condition that it does not cause or give rise to a risk of a non-compliance in the water supply with the quality standards in Table A or Table B in Part 1 of the Schedule.

Where a non-compliance is due to a breach of Regulation 6(2), Regulation 6(3) obliges the relevant sanitary authority to ensure that prompt action is taken to -

- restrict as appropriate the supply of water to the public in the premises until the problem is resolved, and
- restore the internal plumbing to the necessary standard to achieve compliance with the Regulations.

Such action may be taken by the sanitary authority itself, or it may direct the owner of the premises to do so. Note also that Regulation 6(5) requires the sanitary authority, when deciding on the best course of action, to have regard to the risk to human health that would be caused by an interruption or restriction of the supply in the premises.

If the premises on which the problem occurs is owned by a sanitary authority, the authority is further obliged under Regulation 6(4) to inform the Agency promptly, indicating what remedial action it proposes to take, and the proposed timeframe for completion of such action. The sanitary authority must also report back to the Agency when the necessary remediation is completed, indicating the resulting effect on water quality in the premises. The Agency is obliged to undertake such verification of the information provided by the sanitary authority as it considers necessary to ensure that water quality in the premises has been restored.

While the same obligations do not apply to owners of premises where water is not provided as part of a commercial or public activity (such as private houses or apartment blocks), as with the 2000 Regulations, sanitary authorities are nevertheless obliged under Regulation 6(6) to ensure that appropriate measures are taken to reduce the risk of non-compliance, including advising owners of possible remedial action which they might take or applying appropriate treatment techniques before the water is supplied in order to reduce or eliminate the risk of non-compliance with relevant standards after supply. Sanitary authorities must also ensure that any consumers affected are informed, and advised of any possible remedial action which they should take.

EXEMPTED SUPPLIES

Exempted supplies are defined under Regulation 3 as supplies constituting an individual supply of less than 10 cubic metres a day on average or serving fewer than 50 people, which are not supplied as part of a commercial or public activity.

The definition also includes any other water supplies used exclusively for purposes in respect of which the supervisory authority is satisfied that the quality of the water has no effect (whether directly or indirectly) on the health of consumers.

While exempted supplies are not subject to the Regulations per se, Regulation 14(1) nevertheless, obliges each sanitary authority to take measures to notify those served by an exempted supply of the fact that the supply is not covered by these Regulations, and to indicate to them what action can be taken to protect human health from the adverse effects of any contaminated drinking water. In addition, where a potential danger to human health from a supply comes to light, the relevant sanitary authority is obliged to provide appropriate advice promptly to the consumers of that supply.

These obligations replicate the 2000 Regulations. Circular Letter WSP11/04 which provided outline guidance on the implementation of the Drinking Water National Monitoring Programme enclosed a draft model leaflet which was developed for this purpose. The leaflet has been updated to reflect the new Regulations, in consultation with the implementation working group, and a revised generic copy is enclosed.

The updated leaflet should be distributed to all users of exempted supplies in your administrative area, and should be put up on the website of your authority. Each sanitary authority should insert its logo and the various contact details required on the leaflet beforehand. A copy of the leaflet will be emailed to the Director of Water Services in each authority to facilitate this. Please contact the undersigned if it is not received.

WATER QUALITY STANDARDS

The water quality standards specified in Part 1 of the Schedule remain unchanged from the 2000 Regulations, with the exception of the standard for fluoride in artificially fluoridated supplies, which is reduced to a maximum of 0.8 milligrams per litre with effect from 1 July 2007.

DEPARTURES FROM STANDARDS

As with the 2000 Regulations, departures from quality standards prescribed under the Regulations may be granted by the Agency under Regulation 11, subject to the agreement of the Health Service Executive. The grant of a departure is subject to two provisos, i.e., that –

- it will not constitute a potential danger to human health, and
- the supply of drinking water in the area concerned cannot be maintained by other reasonable means.

The onus is on the sanitary authority in the first instance to apply to the Agency for a departure in relation to all water supplies concerned (i.e its own supplies and any supplies for which it has supervisory responsibility).

AUDITS

Regulation 17 requires each sanitary authority (acting as a supervisory authority) to undertake an audit of water supplies for which it has supervisory responsibility. The requirement is subject to guidelines issued by the Agency on the frequency and content of audits. The Agency is duly empowered to issue such guidelines in due course, which shall be binding. The purpose of the audit is to ensure that periodic detailed reviews are carried out on all water supplies on an ongoing basis. It is envisaged that the exercise will mirror similar audits currently undertaken by the Agency on sanitary authority supplies.

CONTINUED APPLICATION OF EXISTING ENVIRONMENTAL PROTECTION AGENCY GUIDELINES

The Environmental Protection Agency has indicated that, subject to such further instructions as it may issue, the *Handbook on Implementation for Local Authorities* previously issued by the Agency in relation to the European Communities (Drinking Water) Regulations 2000 will continue to apply until further notice in relation to practical operational and monitoring procedures, pending its updating.

QUERIES

Any queries on this Circular should be addressed to Margaret McHugh (☎01 888 2166; e.mail: Margaret.McHugh@environ.ie) in Water Services Policy Section, or the undersigned.

Mise, le meas,

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Copy to - Environmental Protection Agency, HSE (National Office of Health Protection), GCCC, CCMA (Water Services Sub-Committee), NFGWS, NRWMC, WSNTG, AMAI, each Regional Authority, Ombudsman's Office and Office of the Information Commissioner.