

Environment and Forestry Directorate

**Consultation in relation to
the draft Water Intended
for Human Consumption
(Private Supplies) (Scotland)
Regulations 2017**

May 2017



Scottish Government
Riaghaltas na h-Alba
gov.scot

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1. Introduction

- 1.1 The Scottish Ministers are seeking comments on proposals to transpose, for private water supplies only, Directive (EU) 2015/1787 (“the Amending Directive”) which makes some changes to Directive 98/83/EC on the quality of water intended for human consumption (“the Drinking Water Directive”). These changes need to be transposed by 27 October 2017.

Large private water supplies (also known as ‘Type A supplies’)

- 1.2 The Scottish Ministers propose to make the Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017 (draft attached). This would replace the provisions of the Private Water Supplies (Scotland) Regulations 2006 (“the existing Regulations”) which apply to large private water supplies.
- 1.3 The draft Regulations would, for larger private supplies, freshly transpose the Directive (as amended). They would also continue to deliver, for larger private supplies, the additional monitoring required by Directive 2013/51/Euratom. This consultation invites comments on the proposed draft Regulations.

Small private water supplies (also known as ‘Type B supplies’)

- 1.4 The Scottish Ministers also propose to update, and possibly replace, the existing Regulations in so far as they apply to small private water supplies. It is envisaged that this will be done by means of a separate set of Regulations.
- 1.5 We welcome views on these proposals.
- 1.6 This consultation will run from 6 May to 28 July 2017.

Handling your response

- 1.7 You may respond to this consultation using [Citizen Space](#) or by post. If you respond using Citizen Space you will be directed to an About You page. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published. If you are unable to respond via Citizen Space, please complete and return the [Respondent Information Form](#) included in this document together with your consultation questionnaire responses to:

Eleanor Vance
Drinking Water Quality Division
Area 3-J South
Victoria Quay
Edinburgh
EH6 6QQ

If responding by post please clearly indicate which questions or parts of the consultation paper you are responding to. This will aid our analysis of the responses received. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

- 1.8 All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

- 1.9 All responses will be analysed and considered along with any other available evidence to help us. Following the close of the consultation and where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <https://consult.scotland.gov.uk/drinking-water-quality-regulator-for-scotland/water-intended-for-human-consumption>. If you use Citizen Space to respond, you will receive a copy of your response via email.
- 1.10 If you have any comments about how this consultation exercise has been conducted, please send them to the contact details above.

2. Background

- 2.1 In Scotland, drinking water is supplied by either Scottish Water (“a public supply”) or someone else (“a private supply”). The quality of drinking water supplied by Scottish Water is regulated by the Public Water Supplies (Scotland) Regulations 2014 (“the 2014 Regulations”). The quality of drinking water supplied by anyone else, except water offered for sale in bottles or containers, is regulated by the Private Water Supplies (Scotland) Regulations 2006 (“the 2006 Regulations”). Together, these regulations implement the Drinking Water Directive and Council Directive 2013/51/Euratom (“the Euratom Directive”) on the protection of the health of the general public with regard to radioactive substances in water intended for human consumption. The Euratom Directive was transposed into Scottish legislation in the Private and Public Water Supplies (Miscellaneous Amendments) (Scotland) Regulations 2015, which amended both the 2006 and 2014 Regulations.
- 2.2 The Amending Directive amends Annexes II and III to the Drinking Water Directive, which lay down the minimum requirements of the monitoring programmes for all water intended for human consumption and the specifications for analysis of different parameters. The specifications in the annexes require to be updated in the light of scientific and technical progress and to be consistent with other EU legislation. The Amending Directive is required to be transposed into domestic legislation by 27 October 2017.
- 2.3 Annex II has been amended to align to the latest updates to the World Health Organisation’s water safety plan approach based on risk assessment and risk management principles laid down in the WHO Guidelines for Drinking Water Quality. Experience has shown that, for many (particularly physico-chemical) parameters in drinking water, the concentrations present would rarely result in any breach of limit values. Monitoring and reporting such parameters without practical relevance imply significant costs, especially where a large number of parameters need to be considered. Introducing flexible monitoring frequencies under such circumstances presents potential cost-saving opportunities that would not damage public health or other benefits. Flexible monitoring also reduces the collection of data that provide little or no information on the quality of the drinking water. The amendments to Annex II allow Member States to derogate from the monitoring programmes they have established, provided there is already three years of sufficient data and credible risk assessments are performed, which may be based on the WHO Guidelines and should take into account the monitoring carried out under Article 8 of Directive 2000/60/EC (“the Water Framework Directive”).
- 2.4 Annex III has been amended to allow laboratories to use the most up-to-date European or equivalent international standards for the analysis of parameters and for the methods of analysis to be validated in accordance with the most recent standards.
- 2.5 For large private water supplies (also known as ‘Type A supplies’), the opportunity is being taken to replace the Private Water Supplies (Scotland)

Regulations 2006 (in so far as they apply to those supplies) with a fresh set of Regulations called 'The Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017'. A draft of these Regulations is enclosed with this consultation. The new draft regulations ('the regulations'):

- align more closely with the provisions of the Drinking Water Directive;
- are restructured to make them easier to follow; and
- confer additional enforcement powers on local authorities so as to give them the tools they need to ensure water supplied by means of large private water supplies meets the water quality standards.

Question 1: Do you have any comments on the way in which we propose to transpose the Amending Directive?

3. Proposals

- 3.1 For large private water supplies (also known as 'Type A supplies'), it is proposed that the Private Water Supplies (Scotland) Regulations 2006 are replaced (in so far as they apply to those supplies) with a fresh set of Regulations, a draft of which is attached. The regulations have been developed following consultation with local authority representatives environmental health officers with responsibility for private water supplies.
- 3.2 **Part 1** of the 2017 Regulations makes general provision for citation, commencement, extent, application, interpretation etc.

This part of the regulations excludes from the regulations: water supplied by Scottish Water; water from a small supply which is exempt under regulation 5; water for sale in bottles or containers (which is regulated for elsewhere); water which is a medicinal product; and water which is used exclusively for the purposes of washing a crop after it has been harvested, or which is used during the distillation of spirits. It contains a number of new or revised definitions, including a revised definition of 'relevant person'; new terms including 'water supplier', 'water supply system' and 'enforcing authority'; and new types of notice (information, remediation, enforcement and emergency). Some expressions are no longer used and are not therefore defined, such as 'Type A supply', 'Type B supply', 'private water supply' and 'monitoring local authority'. This Part also makes further provision in relation to supply zones and water from those small supplies which are exempt from the regulations. Water from a small supply is generally exempt if the water is supplied from a private water supply system which provides (in total) less than 10 m³ of water a day or serves (in total) fewer than 50 persons. However, water (from a small supply) is not exempt if it is supplied as part of a commercial or public activity, or it is supplied to premises used for a commercial or public activity.

Question 2: Do you have any comments on the amended definition of a relevant person?

Question 3: Do you have any comments on the definition of a private water supply system?

3.3 Part 2 makes provision in relation to a register of supply systems etc.

The register is to contain information in relation to each large private water supply system used to supply water to premises in a local authority's area and the quality of the water in and supplied by the system. The detail of the information required is specified in schedule 1 of the draft Regulations and the contents of the register are to be reviewed annually. The owner of premises which receive water through an unrecorded part of a supply system must give the local authority for the area the information it needs to register that part of the system. This part of the draft Regulations also contains requirements for local authorities to provide access to certain information about water quality.

3.4 Part 3 makes provision in relation to the risk assessment of water supplies.

In contrast to the requirements of the 2006 Regulations, under the 2017 Regulations local authorities must carry out a risk assessment in relation to the water supplied through each private water supply system to premises in their area to establish if there is any risk that the water could pose a potential danger to human health, with each initial risk assessment being completed before 1 January 2022. The risk assessment must be carried out using a methodology which is approved by the competent authority which is the Drinking Water Quality Regulator for Scotland (DWQRS). This provision is necessary for transposition of Annex II of the Amending Directive. The results of each risk assessment are to be made available to anyone who requests them, and notified to the owner and occupier of each premises to which it relates. Risk assessments are to be reviewed and if necessary updated at least every 5 years, or earlier if there are adverse changes to the quality of the water or modifications to the supply system. There are also requirements in relation to registration and risk assessment of unused or disused systems being brought into use.

3.5 Part 4 makes provision in relation to water quality standards and duties.

This part sets out the requirements for water quality at each point of compliance as specified in the Drinking Water Directive and introduces a duties of care on a person not to take any action which has the effect of a deterioration in the water quality and to ensure that no substance or material used or introduced into a supply of water either remains in the water at concentrations higher than necessary or reduces the protection of human health. Part 4 also introduces, by reference to schedule 2, additional duties on water suppliers (who supply water as part of a commercial or public activity).

3.6 Part 5 makes provision in relation to monitoring and analysis.

The terms "check monitoring" and "audit monitoring" no longer appear in Annex II of the Drinking Water Directive. Accordingly, these terms are not used in the draft Regulations. Part 5 sets out requirements for local authorities

to ensure that regular monitoring of the quality of water in their area is carried out to check that water available to consumers meets the prescribed water quality standards and requires local authorities to prepare and implement a monitoring programme for each supply zone. A monitoring programme is required for each supply zone. The supply zone will be designated by the DWQRS who will determine which private supplies form part of the supply zone. This Part also specifies the methods of analysis to be used.

Question 4: Do you have any comments on the concept of water supply zones in the context of private water supplies?

3.7 **Part 6** makes provision in relation to investigation and remedial action.

This part sets out requirements for local authorities to investigate failures of water to meet the prescribed parametric values and take remedial action and inform consumers of the water if the water supply poses a potential danger to human health.

3.8 **Part 7** makes provision in relation to information and reporting.

This part places duties on owners of premises served with a private water supply to provide consumers of the water with information on its quality and, in commercial or public premises, to display a notice with information about the source, quality and treatment of the water. Part 7 also places duties on local authorities to provide information on water quality annually to certain public authorities and on the DWQRS to publish a report on private water quality in Scotland every three years.

3.9 **Part 8** makes provision in relation to enforcement powers.

This part places a duty on local authorities to monitor compliance with, and enforce the provisions of, the regulations.

It gives local authorities power to serve a notice (an "information notice") on a person requiring the person to provide information including relevant documentation on water quality and powers of entry and inspection in relation to establishing compliance with the regulations. It introduces provision for remediation and enforcement notices by reference to schedules 7 and 8 respectively.

A remediation notice can be served by a local authority where it reasonably believes that a supply of water poses a potential danger to human health or is failing to meet one or more of the water quality standards and the failure is likely to continue or recur.

An enforcement notice can be served where the local authority reasonably believes that a person has contravened or is contravening a requirement of the regulations and is not rectifying the contravention or preventing its recurrence.

With both forms of notice there is a right of appeal to the sheriff, and action can be taken by the local authority in response to a failure to comply with a notice. A failure to comply with a notice is an offence.

Part 8 also makes provision for a local authority to act where it reasonably believes urgent action is required to reduce or remove a risk to public health or the quality of a water supply as a result of a person's contravention or failure to comply with the regulations. The local authority may undertake the necessary work itself or serve an emergency notice on the person requiring them to take such steps as it considers necessary. Part 8 makes provision regarding the variation or withdrawal of any of the notices under this Part, powers of entry, recovery of expenses by the local authority and a new power of the DWQRS to give directions or guidance to local authorities as to the exercise of their functions under the regulations.

Question 5: Do you have any comments on the enforcement provisions of the new regulations?

3.10 **Part 9** makes provision in relation to offences.

An offence is committed by a person failing to comply with the duty to provide information, duties in relation to bringing into use unused or disused systems, and duties of care in relation to supplies of water and substances and materials; failure to comply with an information notice; obstruction or failing to comply with a requirement under the powers of entry provisions; failure to complete a step required by an emergency notice; and making false statements in applications or in the furnishing of any information required. There is a standard provision in relation to offences committed by bodies corporate. The penalties vary as to the gravity of the offence, with offences which more directly impact on human health attracting a higher maximum fine.

3.11 **Part 10** makes changes to other enactments.

For the purposes of the Water (Scotland) Act 1980, this Part specifies when water, to which the regulations apply, is to be treated as being wholesome. The water is to be regarded as wholesome if it satisfies the water quality standards of the regulations and unwholesome if it does not.

3.12 **Schedule 1** contains details of the information which each local authority register of private water supply systems is to contain or specify and the dates by which the register must contain that information. Information is required about the supply system itself and the water supplied through the system.

Question 6: Do you have any comments on Schedule 1 – the information which must be registered?

3.12 **Schedule 2** sets out the additional duties etc of a water supplier. A 'water supplier' is a person who introduces water into, or uses, a private water supply system for the purposes of supplying water to the premises of a different person as part of a commercial or public activity. This would not

therefore include the owner of land from which a source of water is taken by another person, unless the owner actively supplies the water to those premises as part of a commercial or public activity. A water supplier has a duty to meet the water quality standards of the regulations and to provide information on the quality of the water supplied to the consumers of the water. There are offences provisions in relation to failure to comply with those duties.

Question 7: Do you have any comments on the definition of a water supplier and the duties placed upon a water supplier?

- 3.13 **Schedule 3** sets out the parameters and parametric values as prescribed in the corresponding Annex I of the Drinking Water Directive. The parameters are grouped into microbiological, chemical and indicator parameters.
- 3.14 **Schedule 4** sets out requirements for monitoring as prescribed in Annex II of the Drinking Water Directive and in the Euratom Directive. The Drinking Water Directive, and also accordingly the regulations, allow the standard minimum sampling frequencies to be reduced, and some parameters to be removed from the list of parameters to be monitored, if certain conditions are satisfied.
- 3.15 **Schedule 5** sets out the methods of analysis for which specifications are laid down in Annex III of the Drinking Water Directive and in the Euratom Directive.
- 3.16 **Schedule 6** contains provisions for derogations, as permitted by the Drinking Water Directive, but without provision for a third derogation approved by the European Commission.
- 3.17 **Schedule 7** sets out the detailed provisions in relation to remediation notices, including the circumstances in which the local authority can serve a notice, appeals procedure, action which a local authority can take if a person fails to comply with a notice, and offences.
- 3.18 **Schedule 8** sets out the detailed provisions in relation to enforcement notices, including the circumstances in which the local authority can serve a notice, appeals procedure, action which a local authority can take if a person fails to comply with a notice, and offences.
- 3.19 **Schedule 9** sets out further provision in relation powers of entry, including giving notice, authorisation by warrant, evidence of authority, securing premises on leaving, compensation and protection of commercially confidential information.
- 3.20 **Schedule 10** sets out provisions in relation to the recovery of reasonable expenses for certain activities by local authorities, namely collection and analysis of water samples and carrying out and reviewing risk assessments. The aim of the provision is to ensure that local authorities are able fully to recover the costs of their enforcement of these regulations. Owing to the diversity of private supplies across Scotland we propose not to specify upper

limits on these costs as they may vary from area to area but continue to require that cost recovery should be for expenses reasonably incurred.

Question 8: Do you have any comments on the proposals regarding recovery of charges?

- 3.21 **Schedule 11** makes related amendments to the Water (Scotland) Act 1980, the Private Water Supplies (Grants) (Scotland) Regulations 2006, and the Private Water Supplies (Scotland) Regulations 2006.

Question 9: It is proposed that smaller supplies will be the subject of separate new regulations in due course. Do you have any views on whether and, if so, which of the provisions of the current draft Regulations should not apply to smaller supplies?

4. Impact

- 4.1 A Partial Business and Regulatory Impact Assessment (BRIA) is attached at Annex D.

Question 10: With reference to the draft BRIA do you have any concerns about the impact of the new regulations on businesses, the third sector (voluntary) or any other relevant areas?

Your views are sought on what we are proposing in this consultation.

Title: Consultation in relation to the draft Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes No

ANNEX B

CONSULTATION QUESTIONS

Q1: Do you have any comments on the way in which we propose to transpose the Amending Directive?

Yes No

If "Yes" please enter your comments below.

Comments

Q2: Do you have any comments on the amended definition of a relevant person?

Yes No

If "Yes" please enter your comments below.

Comments

Q3: Do you have any comments on the definition of a private water supply system?

Yes No

If "Yes" please enter your comments below.

Comments

Q4: Do you have any comments on the concept of water supply zones in the context of private water supplies?

Yes No

If "Yes" please enter your comments below.

Comments

Q5: Do you have any comments on the enforcement provisions of the new regulations?

Yes No

If "Yes" please enter your comments below.

Comments

Q6: Do you have any comments on Schedule 1 – the information which must be registered?

Yes No

If "Yes" please enter your comments below.

Comments

Q7: Do you have any comments on the definition of a water supplier and the duties placed upon a water supplier?

Yes No

If "Yes" please enter your comments below.

Comments

Q8: Do you have any comments on the proposals regarding recovery of charges?

Yes No

If "Yes" please enter your comments below.

Comments

Q9: It is proposed that smaller supplies will be the subject of separate new regulations in due course. Do you have any views on whether and, if so, which of the provisions of the current draft Regulations should not apply to smaller supplies?

Yes No

If "Yes" please enter your comments below.

Comments

Q10: With reference to the draft BRIA do you have any concerns about the impact of the new regulations on businesses, the third sector (voluntary) or any other relevant areas?

Yes No

If "Yes" please enter your comments below.

Comments

Draft Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017

SCOTTISH STATUTORY INSTRUMENTS

2017 No.

WATER SUPPLY

The Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017

<i>Made</i>	- - - -	2017
<i>Laid before the Scottish Parliament</i>		2017
<i>Coming into force</i>	- -	27th October 2017

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

There has been a consultation as required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(c).

PART 1 GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017 and come into force on 27th October 2017.

(2) These Regulations extend to Scotland only.

Application

2.—(1) Subject to paragraph (2), these Regulations do not apply to water—

- (a) supplied by Scottish Water, including water supplied by Scottish Water pursuant to an arrangement under section 6(1)(b) of the Water Services etc. (Scotland) Act 2005(d);
- (b) from a small supply which is exempted from the provisions of these Regulations under regulation 5, except in so far as regulation 5 exempts such water from those provisions;
- (c) intended for sale in bottles or containers for drinking by humans which is—
 - (i) recognised as a natural mineral water by regulation 4(1) of the 2007 Regulations; or
 - (ii) required by regulation 10(1) or 13 of the 2007 Regulations to meet the requirements of schedule 2 of those Regulations;
- (d) which is a medicinal product within the meaning of Directive 2001/83/EC of the European Parliament and of the Council on the Community Code relating to medicinal products for human use(e);
- (e) used exclusively for the purposes of washing a crop after it has been harvested where the quality of the water has no influence, either directly or indirectly, on the health of any person consuming the crop, or food or drink derived from the crop; or

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- (a) 1980 c.45. Sections 76(5) and (6), 76J were inserted by section 168 of, and Schedule 22 to, the Water Act 1989 (c.15). Section 76F(7) and (8) was inserted by section 114 of the Local Government etc. (Scotland) Act 1994 (c.39). Section 76A(3)(b) was amended by paragraph 49 of schedule 6 of the Water Industry (Scotland) Act 2002 (asp 3). Section 76F(5) and (6) was amended by paragraph 119(42) of Schedule 13 of the Local Government etc. (Scotland) Act 1994 (c.39). Section 76J was amended by paragraph 119(45) of Schedule 13 of the Local Government etc. (Scotland) Act 1994 (c.39). Section 101(1A) was inserted by section 27(1) of, and paragraph 9(5) of Schedule 10 to, the Natural Heritage (Scotland) Act 1991 (c.28). The definition of “prescribed” in section 109(1) was amended by paragraph 38(f) of Schedule 11 to the Local Government Finance Act 1992 (c.14). The functions conferred on the Secretary of State under sections 76(5) to (8) 76J, 101(1) and (1A) and 109(1) of the Water (Scotland) Act 1980 are, so far as they are exercisable within devolved competence, exercisable by the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).
 - (b) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), schedule, Part 1. The functions conferred on a Minister of the Crown under section 2(2) of the European Communities Act 1972 are, so far as they are exercisable within devolved competence, exercisable by the Scottish Ministers by virtue of section 53 of the 1998 Act. Section 2(2) is cited so far as is necessary (to supplement the other powers cited) for the purposes of implementing, or enabling the implementation of, obligations arising under or by virtue of Directive 98/83/EC and Directive 2013/51/EURATOM. In particular, section 2(2) is cited so far as is necessary to enable the making of the provisions in schedules 7 to 11.
 - (c) OJ L 31, 1.2.2002, p.1, to which there are no relevant amendments to Article 9.
 - (d) 2005 asp 3.
 - (e) OJ L 311, 28.11.2001, p.67, last amended by Directive 2012/26/EU of the European Parliament and of the Council (OJ L 299, 27.10.2012, p.1).

- (f) used during the distillation of spirits which is used—
 - (i) exclusively in the mashing process;
 - (ii) exclusively for washing plant; or
 - (iii) in the mashing process and for washing plant, but for no other purposes, where the quality of the water has no influence, either directly or indirectly, on the health of any person consuming the spirits, or food or drink derived from the spirits.
- (2) The following provisions apply in relation to water used for any purpose specified in paragraph (1)(e) or (f)—
 - (a) regulations 6 to 8 and 10; and
 - (b) paragraphs 1(a) and (c), 2 (except sub-paragraphs (c) and (g) to (l)) and 4 of schedule 1.
- (3) The parameters referred to in the first column of Table C apply only—
 - (a) for the purposes of monitoring pursuant to regulations 19 and 20; and
 - (b) for the fulfilment of obligations imposed by regulations 22 to 24.

Interpretation, etc.

3.—(1) In these Regulations—

“the 2007 Regulations” means the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No. 2) Regulations 2007(a);

“abstracted” includes, as the case may be, collected or otherwise obtained;

“abstraction” includes, as the case may be, collection or other obtainment;

“the appropriate register” means the register which is required to be kept by the enforcing authority for the area in which the premises is situated;

“area”, in relation to a local authority, means the local government area (within the meaning of the Local Government etc. (Scotland) Act 1994(b)) for which the local authority is constituted;

“body of water” has the same meaning as in section 28(1) of the Water Environment and Water Services (Scotland) Act 2003(c);

“building” includes tents, vans, sheds and similar structures, and any facility on land—

(a) for a person to have access to a supply of water in pipes; or

(b) which provides a person with a supply of water in pipes;

“by notice” means by notice given in writing or in electronic form;

“Directive” means Council Directive 98/83/EC on the quality of water intended for human consumption(d);

“emergency notice” means a notice under regulation 33(2);

“enforcement notice” means a notice under paragraph 1(1) of schedule 8;

“enforcing authority”, in relation to water, means a local authority for an area within which is a point of compliance in relation to the water; but the local authority is an enforcing authority only in relation to water which is, or is to be, supplied to or used at the point of compliance;

“indicative dose” means the committed effective dose for one year of ingestion resulting from all radionuclides whose presence has been detected in a supply of water, of natural and artificial origin, but excluding tritium, potassium-40, radon and short-lived radon decay products;

“information notice” means a notice under regulation 29(1);

(a) S.S.I. 2007/483, as relevantly amended by S.S.I. 2009/273, S.S.I. 2010/89 and S.S.I. 2015/363.

(b) 1994 c.39.

(c) 2003 asp 3.

(d) OJ L 330, 5.12.1998, p. 32, as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1), Regulation (EC) No 596/2009 of the European Parliament and of the Council (OJ L 188, 18.7.2009, p. 14), Commission Directive (EU) 2015/1787 (OJ L 260, 7.10.2015, p. 6) and Corrigendum (OJ L 111, 20.4.2001, p. 31).

“in writing” means any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information which is transmitted and stored by electronic means;

“land” has the same meaning as it has in schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010(a);

“limit of detection” means the output signal or concentration value above which it can be affirmed, with a stated level of confidence that a sample is different from a blank sample containing no determinand of interest;

“limit of quantification” means a stated multiple of the limit of detection at a concentration of the determinand that can reasonably be determined with an acceptable level of accuracy and precision (which can be calculated using an appropriate standard or sample, and may be obtained from the lowest calibration point on the calibration curve, excluding the blank);

“local authority”, in relation to an area, means the council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 for that area;

“parameter” means a parameter referred to in the first column of Table A, Table B or Table C;

“parametric value”, in relation to a parameter, means the parametric value in the second column of Table A, Table B or Table C which corresponds to the parameter, or the parametric value which otherwise applies by virtue of a derogation granted under schedule 6;

“owns” means owns whether jointly or individually;

“person” means a person other than—

- (c) Scottish Water; and
- (d) any other person if (and to the extent that) the person is acting on behalf of Scottish Water or under its authority;

“point of compliance”, in relation to water, except whether otherwise specified(b) means—

- (e) in the case of water supplied from any part of private water supply system, the point, within premises, at which it emerges from a tap normally used for human consumption;
- (f) in the case of water supplied from a tanker, the point at which it emerges from the tanker;
- (g) in the case of water put into a bottle or container (which is not intended for sale for drinking by humans), the point at which the water is put into the bottle or container; and
- (h) in the case of water used in a food-production undertaking, the point at which the water is used in the undertaking;

“premises” includes land and any building;

“private water supply system” and “supply system” means a water supply system, excluding—

- (i) any part of the public water supply system; and
- (j) any part of the water supply system if (and to the extent that) it is used by a person to supply water with the help of services provided by Scottish Water as described in section 30 of the Water Industry (Scotland) Act 2002(c);

“public water supply system” has the same meaning as it has in section 28(1) of the Water Services etc. (Scotland) Act 2005(d);

“register” means a register which is required to be maintained under regulation 6;

“relevant person”, in relation to a supply of water in pipes to premises, means a person who—

- (k) owns or occupies—
 - (i) the premises;
 - (ii) land from which any part of the water is abstracted (from the water environment); or
 - (iii) land in, on or over which any part of the private water supply system is installed;

(a) 2010 asp 10.

(b) See Note 5 to Table B in schedule 2.

(c) 2002 asp 3.

(d) 2005 asp 3.

- (l) exercises powers of management or control in relation to—
- (i) the premises;
 - (ii) land from which any part of the water is abstracted (from the water environment);
 - (iii) land in, on or over which any part of the private water supply system is installed;
 - (iv) a body of water or other source from which any part of the water is abstracted; or
 - (v) the supply of water in pipes; or

(m) is a water supplier;

“relevant person”, in relation to a supply of water from a tanker, means a person who supplies the water from the tanker;

“relevant person”, in relation to a supply of water in bottles or containers, means a person who puts the water into the bottles or containers;

“remediation notice” means a notice under paragraph 1(1) of schedule 7;

“risk assessment” means the most recent risk assessment carried out under regulation 11 (as updated, where applicable, by an enforcing authority under regulation 12, 13(3) and 14(3));

“source” means source of water;

“supply of water” includes a supply of water—

- (n) from a private water supply system;
- (o) from a tanker; or
- (p) in bottles or containers;

“supply of water in pipes” means a supply of water through a private water supply system;

“supply zone” means a geographically defined area within which water comes from one or more sources and water quality may be considered as being approximately uniform;

“Table A” means the table in Part A of schedule 3;

“Table B” means the table in Part B of schedule 3;

“Table C” means the table in Part C of schedule 3;

“uncertainty of measurement” means a non-negative parameter characterizing the dispersion of the quantity values being attributed to a measurand, based on the information used;

“water”, except where it is used in the meaning of “water intended for human consumption” or forms part of an expression which is separately defined by these Regulations, means water intended for human consumption (to which these Regulations apply);

“water environment” has the same meaning as in section 3(2) of the Water Environment and Water Services (Scotland) Act 2003^(a);

“water intended for human consumption” means—

- (q) all water, either in its original state or after treatment, intended for drinking, cooking, food preparation or other domestic purposes, regardless of its origin and whether it is supplied from a private water supply system, a tanker, or in bottles or containers; and
- (r) all water used in any food-production undertaking for the manufacture, processing, preservation or marketing of products or substances intended for human consumption, unless the Drinking Water Quality Regulator for Scotland^(b) is satisfied, having regard to the advice of Food Standards Scotland, that the quality of water cannot affect the wholesomeness of the product or substance in its finished form and has confirmed this (with reasons) by notice in accordance with paragraph (2);

“water quality standards” means requirements of regulation 15(1) and (2), as modified by any derogation granted under schedule 6 in respect of the water to which the derogation applies;

(a) 2003 asp 3.

(b) This is the person who is from time to time appointed under section 7 of the Water Industry (Scotland) Act 2002 (asp 3).

“water supplier” means a person who introduces water into, or uses, a private water supply system for the purposes of supplying water to the premises of another person as part of a commercial or public activity;

“water supply system” means all associated pipework, fittings, appliances (including for abstraction, storage and treatment) and other similar infrastructure used, or intended to be used, to supply water to one or more premises, including pipework, fittings, appliances installed between—

- (s) the point or points at which the water is abstracted from the water environment; and
- (t) the point or points at which the water emerges from taps (within each premises) that are normally used for human consumption of the water; and

“year” means calendar year.

(2) Where, pursuant to sub-paragraph (b) of the definition of “water intended for human consumption” in paragraph (1), the Drinking Water Quality Regulator for Scotland is satisfied, having regard to the advice of Food Standards Scotland, that water used in a food-production undertaking for the manufacture, processing, preservation or marketing of a product or substance intended for human consumption cannot affect the wholesomeness of the product or substance in its finished form, it must confirm this (with reasons) by notice to—

- (a) Food Standards Scotland; and
- (b) the enforcing authority for the area in which the food-production undertaking is situated.

Supply zones

4.—(1) The Drinking Water Quality Regulator for Scotland must define each supply zone.

(2) Where an area is defined as a supply zone under paragraph (1)—

- (a) the Drinking Water Quality Regulator for Scotland must, by notice to each relevant enforcing authority, identify—
 - (i) the area defined as a supply zone; and
 - (ii) each supply of water within the supply zone which comes from one or more sources and in relation to which water quality is considered to be approximately uniform; and
- (b) each relevant enforcing authority must treat the area as a supply zone.

(3) The Drinking Water Quality Regulator for Scotland may, by further notice to an enforcing authority, modify or revoke a notice given to the enforcing authority under paragraph (2).

(4) In paragraph (2), “relevant enforcing authority” means, in relation to a supply zone defined under paragraph (1), an enforcing authority for an area containing any part of (either or both)—

- (a) the supply zone; or
- (b) a supply of water which comes from one or more sources within the supply zone.

Exempt supplies

5.—(1) Water from a small supply is exempt from the provisions of these Regulations, unless any of the water is supplied (either or both)—

- (a) as part of a commercial or public activity; or
- (b) to any premises used for a commercial or public activity.

(2) Where water from a small supply is exempt from the provisions of these Regulations under paragraph (1), the enforcing authority in relation to the water, must ensure that any person who may reasonably be expected to consume water from the small supply is—

- (a) informed that water from the supply is exempt from the provisions of these Regulations;
- (b) informed of any action that can be taken to protect human health from the adverse effects resulting from any contamination of such water; and
- (c) promptly given appropriate advice, if a potential danger to human health arising out of the quality of such water is apparent to the relevant person or the enforcing authority.

(3) In this regulation, “water from a small supply” means the water supplied from every part of a private water supply system which (either or both)—

- (a) provides (in total) less than 10 m³ of water a day (as an average); or
- (b) serves (in total) fewer than 50 persons.

PART 2

REGISTER OF SUPPLY SYSTEMS, ETC.

Register of supply systems, etc.

6. An enforcing authority must prepare and maintain a register of information in relation to—
- (a) each private water supply system (including any modifications of, or extensions to, the supply system) used, or intended to be used, to supply water to premises in its area; and
 - (b) the quality of water introduced into, and supplied through and from, the supply system.

Contents of the register

7.—(1) The enforcing authority must ensure that the register includes a record of the information specified in schedule 1, by the corresponding dates specified in that schedule.

(2) Information relating to the same supply system, including information about—

- (a) the relevant supply zone;
- (b) the quality of water introduced into, and supplied through and from, the system; and
- (c) premises served by the system,

must be kept together in the same part of the register.

Review of contents

8. The enforcing authority must, by 28th February in each year, review the contents of each part of the register to ensure that it includes all the information required, and update it as required.

Duty to provide information

9. Where water is being, or is intended to be, supplied to premises through any part of a supply system which is not recorded in the register (“the unrecorded part”), each person who owns the premises must ensure that the enforcing authority (“the registering authority”) for the area in which the premises is situated is, or has been, provided with all the information relating to the unrecorded part which the registering authority needs in order to comply with its duties under this Part.

Access to information

10.—(1) An enforcing authority must ensure that information about water quality is available for inspection by any person at all reasonable times.

(2) The enforcing authority must provide to—

- (a) the Drinking Water Quality Regulator for Scotland;
- (b) any other enforcing authority;
- (c) any Health Board;
- (d) the Scottish Environment Protection Agency; and
- (e) the Scottish Ministers,

details of, or copies of, such information included in the register as they may reasonably request.

(3) In paragraph (1), “information about water quality” means the information specified in paragraph 3 and 4 of schedule 1 in so far as it—

- (a) is contained in the register maintained by the enforcing authority under this Part; and
- (b) relates to the quality of water supplied into, through or from a supply system (including any assessment of risks to human health and any remedial action taken or required).

PART 3

RISK ASSESSMENT OF WATER SUPPLIES

Risk assessment of water supplies

11.—(1) An enforcing authority must carry out a risk assessment in relation to water introduced into, and supplied through and from, each private water supply system to premises in its area so as to establish if there is any risk that the water could pose a potential danger to human health.

(2) Each initial risk assessment must be completed before 1st January 2022.

(3) Without prejudice to the generality of paragraph (1), the assessment must—

- (a) seek to establish whether—
 - (i) the measures in place to control risks to human health throughout the water supply chain from the catchment area through abstraction, treatment and storage to distribution are working effectively; and
 - (ii) water at each point of compliance meets the water quality standards; and
- (b) assess available information on the quality of water supplied to establish whether—
 - (i) the water quality standards are being met; and
 - (ii) the parametric values in the first column of Table C are not being exceeded; and
- (c) identify the most appropriate means of mitigating any risk to human health.

(4) The assessment—

- (a) must be carried out in accordance with a method which is approved by the Drinking Water Quality Regulator for Scotland;
- (b) must be based on the general principles of risk assessment set out in relation to international standards such as standard EN 15975-2 concerning security of drinking water supply, guidelines for risk and crisis management; and
- (c) must take into account the results of monitoring carried out—
 - (i) under these Regulations; and
 - (ii) under section 8 (monitoring) of the Water Environment and Water Services (Scotland) Act 2003 in respect of bodies of water identified under section 6 of that Act (bodies of water used for the abstraction of drinking water).

(5) For each assessment, the enforcing authority must ensure that—

- (a) the following is made available to any person who requests it (“the information”)—
 - (i) information showing that a risk assessment has been carried out; and
 - (ii) a summary of the results of the risk assessment; and
- (b) the information is notified to the owner and occupier of each premises supplied with water from the private water supply system to which the risk assessment relates.

Review of risk assessments

12.—(1) Subject to paragraph (2), where an enforcing authority has carried out a risk assessment, the enforcing authority must review and, where necessary, update it at least every 5 years (or earlier if it considers that the existing risk assessment is inadequate for any reason).

(2) The enforcing authority must review and, where necessary, update the risk assessment as soon as possible in the event that it becomes aware of any—

- (a) deterioration of the present quality of the water;
- (b) increase in the pollution of a body of water or other source used for the abstraction of the water; or
- (c) modification to, or extension of, the supply system from which the water is supplied,

which is relevant for the protection of human health and was not previously taken into account.

Duties in relation to use of unused system

13.—(1) If part of a private water supply system has not been used to provide a supply of water in pipes (“the unused part”), no person may use the unused part to provide a supply of water to premises (“the intended use”) unless—

- (a) the unused part is recorded in the appropriate register;
- (b) a risk assessment has been carried out in relation to the supply system by the enforcing authority for the area in which the premises is situated;
- (c) the risk assessment—
 - (i) takes account of the intended use of the unused part and was carried out within the period of 8 weeks preceding the intended use of the unused part; or
 - (ii) has been reviewed and updated to take account of the intended use of the unused part within the period of 8 weeks preceding the intended use of the unused part; and
- (d) the enforcing authority has confirmed, by notice to the person, that it is satisfied that—
 - (i) the risk assessment does not identify any risk that the intended use of the unused part could constitute a potential danger to human health; and
 - (ii) the unused part may be used for the intended use.

(2) If the risk assessment does not take account of the intended use of the unused part, a person who wishes to use the unused part may request, in writing, that the enforcing authority review and update the risk assessment to take to take account of the intended use of the unused part.

(3) On receipt of a request under paragraph (2) and the payment of any fee required under these Regulations, the enforcing authority must within a further period of 8 weeks beginning with the day the request was received or the day the payment was made (whichever is the latter)—

- (a) review and, where necessary, update the risk assessment to take account of the intended use of the unused part; and
- (b) confirm, by notice to the person, whether it is satisfied as to the matters in paragraph (1)(d)(i) and (ii).

Duties in relation to use of disused system

14.—(1) If part of a private water supply system has been used to provide a supply of water in pipes but has not been used for that purpose in the preceding 12 months (“the disused part”), no person may use the disused part to provide of a supply of water to premises (“the intended use”) unless—

- (a) the disused part is recorded in the appropriate register;
- (b) a risk assessment has been carried out in relation to the supply system by the enforcing authority for the area in which the premises is situated;
- (c) the risk assessment—
 - (i) takes account of the intended use of the disused part and was carried out within the period of 8 weeks preceding the intended use of the disused part; or
 - (ii) has been reviewed and updated to take account of the intended use of disused part within the period of 8 weeks preceding the intended use of the disused part; and
- (d) the enforcing authority has confirmed, by notice to the person, that it is satisfied that—

- (i) the risk assessment does not identify any risk that the intended use of the disused part could constitute a potential danger to human health; and
- (ii) the disused part may be used for the intended use.

(2) If the risk assessment does not take account of the intended use of the disused part, a person who wishes to use the disused part (“the person”) may request that the enforcing authority review and update the risk assessment to take account of the intended use of the disused part.

(3) On receipt of a request under paragraph (2) and the payment of any fee required under these Regulations, the enforcing authority must within a further period of 8 weeks beginning with the day the request was received or the day the payment was made (whichever is the latter)—

- (a) review and, where necessary, update the risk assessment to take account of the intended use of the disused part; and
- (b) confirm, by notice to the person, whether it is satisfied as to the matters in paragraph (1)(d)(i) and (ii).

PART 4

WATER QUALITY STANDARDS AND DUTIES

Water quality standards

15.—(1) At each point of compliance, water must not contain—

- (a) a micro-organism, parasite or substance which (in number or concentration) poses a potential danger to human health; or
- (b) a parameter which exceeds its parametric value in Table A or Table B.

(2) At the point of compliance, the sum of the following must not exceed 1 mg/l—

- (a) nitrate (in mg/l) in the water, divided by 50; plus
- (b) nitrite (in mg/l) in the water, divided by 3.

(3) Schedule 6 makes provision for derogations.

Duty of care: supplies of water

16. A person, in relation to a supply of water, must not take any action which has the effect of allowing any deterioration of the quality of the water (in so far as that is relevant for the protection of human health).

Duty of care: substances and materials

17. A person who, in relation to a supply of water, modifies any part of a private water supply system or introduces any substance to the water supplied (for purposes in connection with the distribution or preparation of the water) must ensure that no substance or material used or introduced for those purposes (or any impurity associated with any such substance or material)—

- (a) remains in the water (including, in particular, at the point of compliance) in concentrations higher than is necessary for the purpose of their use; or
- (b) reduces the protection of human health otherwise provided for by these Regulations.

Additional duties etc. of water suppliers

18. Schedule 2 imposes additional duties etc. on a person who introduces water into, or uses, a private water supply system for the purposes of supplying water to the premises of another person.

PART 5

MONITORING AND ANALYSIS

Monitoring

19.—(1) An enforcing authority must ensure that regular monitoring of the quality of water in its area is carried out to check that water available to consumers meets the water quality standards.

(2) Where the enforcing authority has reason to suspect that the water contains a micro-organism, parasite or substance (in number or concentration) which—

- (a) poses a potential danger to human health; and
- (b) is not one of the parameters referred in the first column of Table A, Table B or Table C,

the enforcing authority must ensure that monitoring is carried out to establish whether, at the point of compliance, the micro-organism, parasite or substance poses such a potential danger.

(3) Where disinfection forms part of the preparation or distribution of the water, the enforcing authority must take all measures necessary to ensure that—

- (a) the efficiency of the disinfection treatment applied is verified; and
- (b) any contamination from disinfection by-products is kept as low as possible without compromising the disinfection.

(4) The enforcing authority must ensure that the monitoring is carried out so as to ensure that the measured values are representative of the quality of the water consumed throughout the year.

Monitoring programmes

20.—(1) An enforcing authority must prepare and implement a monitoring programme for each supply zone (or part of a supply zone) in so far as the supply zone (or the part of it) relates to—

- (a) water introduced into, and supplied through and from, a private water supply system to premises within the area of the enforcing authority; or
- (b) water produced within the supply zone (or the part of it) which is supplied from a tanker or in bottles or containers to a point of compliance within the authority's area.

(2) Each monitoring programme prepared by the enforcing authority must—

- (a) meet its obligations under regulation 19;
- (b) meet the minimum requirements in Parts A to D of schedule 4; and
- (c) accord with the monitoring requirements in Parts E and F of schedule 4.

(3) The enforcing authority must—

- (a) determine the sampling points (for the purposes of each monitoring programme); and
- (b) ensure that these sampling points meet the relevant requirements in schedule 4.

Methods of analysis

21.—(1) Each enforcing authority must ensure that the method used for the analysis of a parameter in a sample of the water pursuant to regulation 19—

- (a) complies with the specifications for the analysis of the parameter in schedule 5; or
- (b) produces results which are at least as reliable as those produced by a method which complies with the specifications for the analysis of the parameter in schedule 5.

(2) A method of analysis in relation to which paragraph (1)(b) applies may be used only if—

- (a) the enforcing authority has provided all relevant information concerning the method and its equivalence to—
 - (i) the Drinking Water Quality Regulator for Scotland; and
 - (ii) the Scottish Ministers; and

- (b) the Drinking Water Quality Regulator for Scotland—
 - (i) is satisfied that it can be demonstrated that the alternative method produces results which are at least as reliable as those produced by a method which complies with the specifications for the analysis of the parameter in schedule 5; and
 - (ii) has confirmed this by notice to the enforcing authority.

PART 6

INVESTIGATION AND REMEDIAL ACTION

Investigation and remedial action

22. Each enforcing authority, in relation to a supply of water, must ensure that—

- (a) a failure of the water to meet a parametric value in Table A, Table B or Table C is immediately investigated in order to identify the cause, and assessed to determine whether the failure poses a risk to human health which requires remedial action;
- (b) if, for any reason, the supply of water poses a potential danger to human health—
 - (i) remedial action is taken as is necessary to protect human health (including, where appropriate, action to prohibit the supply of water or to restrict its use); and
 - (ii) consumers are informed promptly of the danger and given the necessary advice; and
- (c) subject to regulation 23, remedial action is taken as soon as possible (after any such failure) to restore the quality of the water so that it meets the parametric value, with priority given to enforcement action having regard among other things to the extent to which the parametric value was exceeded and the potential danger to human health.

Remedial action to restore water quality: supplementary

23.—(1) In the case of a failure to meet a parametric value in Table C, the duty to take action under regulation 22(c) applies only in so far as action is necessary to protect human health.

(2) The duty of an enforcing authority to take remedial action under regulation 22(c) does not apply in relation to a failure referred to in regulation 22(a) (other than a failure to meet a parametric value for radon, tritium or indicative dose) in a case where it can be established by the enforcing authority that the failure was due to—

- (a) any part of a domestic distribution system in a building, except a building where water is supplied to the public, such as schools, hospitals and restaurants; or
- (b) the maintenance of any such part of a domestic distribution system.

(3) Where paragraph (2) applies and there is a risk that water supplied from any such part of the domestic distribution system will, at the point of compliance, contain a parameter which exceeds a parametric value in Table A, Table B or Table C, the enforcing authority must ensure—

- (a) that appropriate measures are taken to reduce or eliminate the risk, such as—
 - (i) advising the person who is responsible for the domestic distribution system of any possible remedial action that the person could take to reduce or eliminate the risk; or
 - (ii) treating the water before it is supplied to the domestic distribution system so that the parametric value in question is not exceeded at the point of compliance; and
- (b) that each consumer of the water is—
 - (i) informed of the risk; and
 - (ii) advised of any possible additional remedial action that they should take.

(4) In this regulation “domestic distribution system” has the same meaning as it has in paragraph 1(6) of schedule 2 (as read with paragraph 1(7) of that schedule).

Notification

24.—(1) The enforcing authority must ensure that, where remedial action is taken in relation to a water pursuant to regulation 22(c), consumers of the water and any other person affected, are—

- (a) notified of the risk (if any) to human health and the remedial action taken; and
- (b) advised of any additional precautionary measures that may be needed for the protection of human health.

(2) The duty to notify consumers in paragraph (1) does not apply if the enforcing authority confirms, by notice to the Drinking Water Quality Regulator for Scotland, that the remedial action was taken in response to a failure to meet a parametric value (other than a failure to meet a parametric value for radon, tritium or indicative dose) which it considers to be trivial.

PART 7

INFORMATION AND REPORTING

Duty to provide information to consumers

25.—(1) A person who owns premises served with a supply of water must ensure that adequate and up-to-date information on the quality of the water is available to the consumers of the water.

(2) If the premises are used for the purposes of a commercial or public activity, the owner must ensure that a notice is prominently displayed in a location which will bring the information contained in the notice to the attention of any person using the premises.

(3) The notice must include such information as the enforcing authority may require about the source, quality or treatment of the water.

Information for certain public authorities

26. By 28th February in each year, an enforcing authority must provide to the following persons adequate and up-to-date information on the quality of the water available to the consumers of the water in its area for the preceding year—

- (a) the Drinking Water Quality Regulator for Scotland;
- (b) any Health Board;
- (c) Scottish Environment Protection Agency; and
- (d) the Scottish Ministers.

Reports about water quality

27.—(1) The Drinking Water Quality Regulator for Scotland must publish a report every 3 years on the quality of water in Scotland with the objective of informing consumers of the water.

(2) Each report must—

- (a) include, as a minimum, every supply of water—
 - (i) exceeding 1,000 m³/day (as an average); or
 - (ii) serving more than 5,000 persons;
- (b) cover a period of three years (“the reporting period”); and
- (c) be published within one year of the end of the reporting period.

(3) The first report must cover the period of 3 years beginning with 1st January 2017.

PART 8

ENFORCEMENT POWERS

Exercise of enforcement powers

28.—(1) An enforcing authority must, in relation to each supply of water to a point of compliance in its area, monitor compliance with and enforce the provisions of these Regulations.

(2) Pursuant to paragraph (1), the enforcing authority must exercise its functions under—

- (a) these Regulations; and
- (b) so far as applicable, under any other enactment,

so as to secure compliance with and enforce the provisions of these Regulations.

(3) An enforcing authority must, when deciding what action is necessary for the purposes of regulation 22(b), bear in mind the risks to human health which would be caused by—

- (a) an interruption of the supply; or
- (b) a restriction in the use of water.

Power to obtain information

29.—(1) An enforcing authority may serve on a person a notice requiring the person—

- (a) to provide the enforcing authority, at a time and place and in the form and manner specified in the notice, with such information relating to the quality of water as may be specified or described in the notice; or
- (b) to produce to the enforcing authority, at a time and a place specified in the notice, any documents relating to that matter which are specified or described in the notice and are in that person's custody or under that person's control.

(2) A notice under paragraph (1) may only be served on a person whom the enforcing authority has reason to believe is or may be in possession of relevant information or documents.

(3) Nothing in this regulation authorises the enforcing authority to require the disclosure of anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.

(4) References in this regulation to a document are to anything in which information of any description is recorded; and in relation to a document in which information is recorded otherwise than in legible form, references to producing it are to producing it in legible form.

(5) Where by virtue of this regulation documents are produced to any person, that person may take copies of or make extracts from them.

Powers of entry, inspection etc.

30.—(1) For the purposes of establishing whether any requirement of these Regulations has been, is being or is likely to be complied with, the enforcing authority may exercise the powers specified in paragraph (2).

(2) Those powers are—

- (a) the power to enter—
 - (i) any premises to which a supply of water is provided;
 - (ii) any premises of a relevant person; or
 - (iii) any premises of any other person,for the purpose of exercising any of the powers specified in sub-paragraphs (b) to (d);
- (b) the power to carry out such inspections, measurements and tests on those premises or of substances, articles or documents found there as the enforcing authority thinks necessary;

- (c) for the purpose of carrying out such inspections, measurements and tests as the enforcing authority thinks necessary, the power to take away from those premises substances, articles or documents found there; and
- (d) the power to take away from those premises such samples of water, land, substances or articles as the enforcing authority thinks necessary.

(3) The powers specified in paragraph (2) must not be exercised in relation to premises referred to in sub-paragraph (a)(iii) of that paragraph unless the enforcing authority is satisfied that the exercise of those powers in relation to the premises referred to in sub-paragraph (a)(i) and (ii) of that paragraph would be insufficient for the purpose specified in paragraph (1).

(4) The owner and occupier of any premises in relation to which the enforcing authority exercises the powers specified in paragraph (2) and any person on such premises when those powers are being exercised must—

- (a) give the enforcing authority such assistance; and
- (b) provide the enforcing authority with such information,

as the enforcing authority may reasonably require.

Remediation notices

31. Schedule 7 makes provision about remediation notices.

Enforcement notices

32. Schedule 8 makes provision about enforcement notices.

Emergency action and notices

33.—(1) Where an enforcing authority reasonably believes in relation to a supply of water to a point of compliance in its area—

- (a) that a person—
 - (i) has contravened or is contravening a requirement of these Regulations; or
 - (ii) has failed to comply with, or is failing to comply with a requirement of these Regulations;
- (b) that as a result of the contravention or failure to comply there is a significant risk to—
 - (i) public health; or
 - (ii) the quality of a supply of water; and
- (c) that urgent action is necessary to reduce or remove that risk,

the enforcing authority may take action in accordance with this regulation.

(2) The enforcing authority may serve on the person an emergency notice requiring the person, by such date as the notice may specify, to take such steps as the notice may specify, being steps which the enforcing authority considers necessary for the purposes of reducing or removing the risk referred to in paragraph (1)(b).

(3) Without prejudice to paragraph (2), the enforcing authority may—

- (a) enter any premises and carry out such work as the enforcing authority considers necessary for the purposes mentioned in that paragraph; and
- (b) recover from the person any expenses which the enforcing authority reasonably incurs in carrying out, or securing the carrying out, of that work.

(4) The expenses which may be recovered under paragraph (3)(b) include such proportion of the enforcing authority's administrative expenses (including expenses incurred in establishing the contravention or the failure to comply, and in connection with the emergency notice) as the enforcing authority considers appropriate.

Variation and withdrawal of notices

34.—(1) The enforcing authority may—

- (a) withdraw—
 - (i) a remediation notice;
 - (ii) an enforcement notice; or
 - (iii) an emergency notice; and
- (b) waive or relax any requirement of any such a notice,

including substituting a later date for a date specified under paragraph 1(4) of schedule 7, paragraph 1(4) of schedule 8 or, as the case may be, regulation 33(2).

(2) The powers in paragraph (1) may be exercised whether or not the notice has taken effect.

(3) The withdrawal of a remediation notice, an enforcement notice or an emergency notice does not affect the enforcing authority's power to issue a further such notice.

Powers of entry, etc.: further provision

35.—(1) Schedule 9 makes further provision about powers of entry etc. conferred by—

- (a) regulation 30(1);
- (b) paragraph 3(2)(a) of schedule 7;
- (c) paragraph 3(2)(a) of schedule 8; and
- (d) regulation 33(3)(a).

(2) References in this Part to a power conferred by any of those provisions include references to such a power exercisable by virtue of a warrant under that schedule.

Recovery of certain expenses

36. Schedule 10 makes provision for the recovery by an enforcing authority of certain expenses reasonably incurred by it in the exercise of its functions under these Regulations.

Directions and guidance

37.—(1) The Drinking Water Quality Regulator for Scotland may give directions (whether general or specific) and guidance to an enforcing authority (whether one or more) as to, or in relation to, the exercise of the enforcing authority's functions under these Regulations.

(2) Directions under paragraph (1) may include provision—

- (a) as to the cases and circumstances in which an enforcing authority is, or is not, to exercise any of the powers conferred on the enforcing authority by these Regulations;
- (b) the manner in which those powers are to be exercised; and
- (c) for any matter to which the directions relate to be determined, in such manner (if any) as the directions may specify, by a person other than the enforcing authority.

(3) An enforcing authority must—

- (a) comply with any such directions; and
- (b) have regard to any such guidance.

PART 9

OFFENCES: GENERAL DUTIES, ETC.

Offences: general duties

38.—(1) It is an offence for a person to fail to comply with—

- (a) regulation 9 (duty to provide information);
- (b) regulation 13(1) (duties in relation to use of unused system);
- (c) regulation 14(1) (duties in relation to use of disused system);
- (d) regulation 17 (duty of care: supplies of water); or
- (e) regulation 18 (duty of care: substances and materials).

(2) In any proceedings against a person for an offence under paragraph (1), it is a defence to show that the person took all reasonable steps and exercised all due diligence to avoid committing the offence.

(3) A person who commits an offence under paragraph (1)(a) to (c) is liable on summary conviction to a fine not exceeding the level 3 on the standards scale.

(4) A person who commits an offence under paragraph (1)(d) or (e) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

Offence: failure to comply with an information notice

39.—(1) It is an offence for a person to—

- (a) refuse or fail, without reasonable excuse, to do anything required of the person by a notice under regulation 29(1); or
- (b) intentionally alter, suppress or destroy a document which the person is required by such a notice to produce.

(2) A person who commits an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Offence: obstruction, etc.

40.—(1) It is an offence for a person to—

- (a) intentionally obstruct a person acting in the exercise of any power conferred by regulation 30(1); or
- (b) refuse or fail, without reasonable excuse, to comply with a requirement made under regulation 30(4).

(2) A person who commits an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Offences: emergency notices, etc.

41.—(1) It is an offence for a person to fail to do anything which an emergency notice requires the person to do (including a failure to complete a step required by a specified date).

(2) It is an offence for a person to intentionally obstruct any other person acting in the exercise of a power conferred by regulation 33(3)(a).

(3) A person who commits an offence under paragraph (1) or (2) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

Offence: false statements

42.—(1) It is an offence for a person—

- (a) making an application for a derogation under schedule 6; or
- (b) furnishing information—
 - (i) pursuant to regulation 9; or
 - (ii) in connection with a notice given to the person under regulation 29(2),

to make a statement which that person knows to be false in a material particular, or to recklessly make a statement which is false in a material particular.

(2) A person who commits an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Offences by bodies corporate etc.

43.—(1) Where—

- (a) an offence under these Regulations has been committed by a body corporate or a Scottish partnership or other unincorporated association; and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect of the part of—
 - (i) a relevant individual; or
 - (ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the body corporate, Scottish partnership or unincorporated association commits an offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1), “relevant individual” means—

- (a) in relation to a body corporate—
 - (i) a director, manager, secretary or other similar officer of the body; or
 - (ii) where the affairs of the body are managed by its members, a member;
- (b) in relation to a Scottish partnership, a partner; and
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

PART 10
CHANGES TO OTHER ENACTMENTS

Modification of Water (Scotland) Act 1980

44.—(1) For the purposes of the Water (Scotland) Act 1980, water (to which these Regulations apply) which is supplied to any premises is—

- (a) to be regarded as wholesome if it satisfies the water quality standards; and
- (b) not to be regarded as wholesome if it fails to satisfy the water quality standards.

(2) In paragraph (1) “premises” has the meaning it has in section 109(1) (interpretation) of the Water (Scotland) Act 1980.

Consequential amendments

45. Schedule 11 makes consequential amendments.

A member of the Scottish Government

St Andrew’s House,
Edinburgh

2017

SCHEDULE 1
INFORMATION TO BE REGISTERED

Regulations 7(1) and 10(1)

Dates by which the register must contain information

1. The register must contain or specify—

- (a) by 1st January 2018—
 - (i) the information specified in paragraph 2, but only in so far as the information can be readily determined from existing sources of available information; and
 - (ii) the information specified in paragraph 4;
- (b) within 28 days of the date on which the information is first known (or becomes readily available) to the enforcing authority, the information specified in paragraph 3; and
- (c) by 1st January 2019, any other information specified in paragraph 2.

Information relating to private water supply systems

2. For each private water supply system (“the system”), the register must contain or specify—

- (a) a unique reference number, and a unique locality-based name, for the system;
- (b) the estimated volume of water (in m³) supplied each day by the system (as an average taken over a year) to all premises (including those outside the area of the enforcing authority) which are within the supply zone for the water supplied;
- (c) the estimated maximum number of persons served by the system on the same day (including any person served outside the area of the enforcing authority);
- (d) a map identifying the location of every known part of the system (including any part of the system which is outside the area of the enforcing authority), including—
 - (i) the supply zone (in respect of the water supplied into and through the system);
 - (ii) each body of water or other source from which the water is abstracted;
 - (iii) the point or points at which the water is abstracted from each body of water or other source;
 - (iv) pipework and appliances (including water treatment equipment), except pipework and appliances within any building supplied, or intended to be supplied, with water;
 - (v) each building supplied, or intended to be supplied, with water;
 - (vi) any other building connected to the system;
 - (vii) the ownership of land from which any part of the water is abstracted; and
 - (viii) the ownership of land in, on or over which any part of the supply is installed;
- (e) for each point at which water is abstracted—
 - (i) the Ordnance Survey national grid reference;
 - (ii) whether the water is abstracted from a watercourse, loch, spring, well, borehole or other source (and, if abstracted from the latter, a description of the other source); and
 - (iii) the estimated volume of water (in 10 m³ a day, calculated as an average taken over a year) distributed by the system from the abstraction point;
- (f) details of any treatment carried out in relation to water supplied by the system;
- (g) the name and address of each building supplied, or to be supplied, with water;
- (h) the name and address of any other building connected to the system, and the purposes for which any such connection is used, or may be used;

- (i) if known to the enforcing authority, the name and address of any person who owns—
 - (i) a building supplied, or to be supplied, with the water;
 - (ii) land from which any part of the water is abstracted (from the water environment); and
 - (iii) land in, on or over which any part of the private water supply system is installed;
- (j) if known to the enforcing authority, the name and address of each water supplier (if any);
- (k) details of monitoring programmes (so far as relevant) prepared by the enforcing authority to meet its obligations under these Regulations, including the sampling points; and
- (l) details of any grant awarded in relation to the system under the Private Water Supply (Grants) (Scotland) Regulations 2006.

Information relating to water supplied

3. For each registered private water supply system, the register must also contain or specify the following information (if any) in relation to water (“the water”) supplied through any part of the system to a point of compliance in the area of the enforcing authority—

- (a) a copy of the risk assessment in relation to the water;
- (b) information about any relevant derogation under these Regulations, including a copy of—
 - (i) application for the derogation;
 - (ii) the derogation granted; and
 - (iii) any revocation or modification of the derogation;
- (c) the results of each sample of the water taken and analysed pursuant to these Regulations;
- (d) the results of any investigation under regulation 22(a);
- (e) details of any remedial action taken pursuant to regulation 22(b) or (c); and
- (f) a copy of any remediation notice, enforcement notice or emergency notice served in relation to the water.

Information from previous register

4.—(1) For each registered private water supply system (“the system”), the register must contain copies of any information (“the information”) relating to—

- (a) the system; and
- (b) the water previously supplied into, through or from the system,

which was, immediately before 27th October 2017, required to be maintained in a register (“a previous register”) under regulation 34 of the Private Water Supplies (Scotland) Regulations 2006^(a).

(2) If any information which an enforcing authority (“the registering authority”) is required to keep under paragraph (1) was immediately before 27th October 2017 contained in a previous register which was maintained by any other enforcing authority, the other enforcing authority must forward the information (or, if the other enforcing authority is also required to maintain a register containing any of the same information, forward a copy of it) to the registering authority.

(a) S.S.I. 2006/2009, as amended by S.S.I. 2010/95, S.S.I. 2014/364 and S.S.I. 2015/346.

SCHEDULE 2

Regulation 18 and 23

ADDITIONAL DUTIES ETC. OF WATER SUPPLIERS

Duty to meet water quality standards

1.—(1) A water supplier who introduces water into, or uses, a private water supply system for the purposes of supplying water to the premises of another person must ensure that the water supplied to the premises meets the water quality standards at the point of compliance.

(2) A water supplier is not to be treated as having failed to comply with sub-paragraph (1) in a case where the enforcing authority in relation to the water confirms, by notice to the water supplier, that the failure is due to a domestic distribution system or the maintenance of it.

(3) For the purposes of sub-paragraph (2), where a domestic distribution system does not include appliances for treatment, any failure which might be attributed to the absence of such appliances is not to be treated as being due to the domestic distribution system or the maintenance of it.

(4) Where, due to a domestic distribution system or the maintenance of it, there is a risk that the water will, at the point of compliance, contain a parameter which exceeds a parametric value in Table A, Table B or Table C, the enforcing authority must ensure—

- (a) that appropriate measures are taken to reduce or eliminate the risk, such as—
 - (i) advising the person who is responsible for the domestic distribution system of any possible remedial action that the person could take to reduce or eliminate the risk; or
 - (ii) treating the water before it is supplied to the domestic distribution system so that the parametric value in question is not exceeded at the point of compliance; and
- (b) that each consumer of the water is—
 - (i) informed of the risk; and
 - (ii) advised of any possible additional remedial action that they should take.

(5) Sub-paragraphs (2) to (4) do not apply in a case where the domestic distribution system is in premises where water is supplied to the public (such as schools, hospitals and restaurants).

(6) In this regulation, “domestic distribution system” means any and all pipework, fittings and appliances (including for storage and treatment) which are both—

- (a) installed between—
 - (i) the taps that are normally used for human consumption of water; and
 - (ii) other parts of the private water supply system; and
- (b) not the responsibility of a water supplier (in its capacity as a water supplier).

(7) For the purposes of the definition of “domestic distribution system” in sub-paragraph (6) (and without prejudice to other circumstances in which a water supplier may be responsible), a water supplier is to be treated as being responsible for all pipework, fittings and appliances—

- (a) vested in the water supplier;
- (b) managed or controlled by the water supplier; or
- (c) maintained by the water supplier.

Duty to provide water quality information

2.—(1) A water supplier who introduces water into, or uses, a private water supply system for the purposes of supplying water to the premises of another person, must ensure that adequate and up-to-date information on the quality of the water is available to the consumers of the water.

(2) If the premises are used for the purposes of a commercial or public activity, the water supplier must ensure that a notice is prominently displayed in a location which will bring the information contained in the notice to the attention of any person using the premises.

(3) The notice must include such information as the enforcing authority may require about the source, quality or treatment of the water.

Offences relating to additional duties of water suppliers

3.—(1) It is an offence for a water supplier to fail to comply with—

- (a) paragraph 1(1) (duty to meet water quality standards);
- (b) paragraph 2(1) (duty to make information available to consumers); or
- (c) paragraph 2(2) or (3) (duties in relation to the display of information).

(2) In any proceedings against a person for an offence under sub-paragraph (1), it is a defence to show that the person took all reasonable steps and exercised all due diligence to avoid committing the offence.

(3) A person who commits an offence under sub-paragraph (1)(a) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

(4) A person who commits an offence under sub-paragraph (1)(b) or (c) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

SCHEDULE 3

Regulation 3(1)

PARAMETERS AND PARAMETRIC VALUES

PART A

Microbiological parameters

<i>Parameter</i>	<i>Parametric value (number/volume)</i>
Enterococci	0/100 ml
<i>Escherichia coli</i>	0/100 ml

PART B

Chemical parameters

<i>Parameter</i>	<i>Parametric value</i>	<i>Unit</i>	<i>Notes</i>
Acrylamide	0.10	µg/l	Note 1
Antimony	5.0	µg/l	
Arsenic	10	µg/l	
Benzene	1.0	µg/l	
Benzo(a)pyrene	0.010	µg/l	
Boron	1.0	mg/l	
Bromate	10	µg/l	Note 2
Cadmium	5.0	µg/l	
Chromium	50	µg/l	
Copper	2.0	mg/l	Note 3
Cyanide	50	µg/l	
1,2-dichloroethane	3.0	µg/l	
Epichlorohydrin	0.10	µg/l	Note 1
Fluoride	1.5	mg/l	
Lead	10	µg/l	Notes 3 and 4
Mercury	1.0	µg/l	
Nickel	20	µg/l	Note 3
Nitrate	50	mg/l	
Nitrite	0.50	mg/l	
	0.10	mg/l	Note 5
Pesticides—			Note 6
Aldrin	0.030	µg/l	
Dieldrin	0.030	µg/l	
Heptachlor	0.030	µg/l	
Heptachlor epoxide	0.030	µg/l	
Other pesticide	0.10	µg/l	Note 7
Pesticides: total	0.50	µg/l	Notes 6 and 8
Polycyclic aromatic hydrocarbons	0.10	µg/l	Note 9
Selenium	10	µg/l	
Tetrachloroethene and	10	µg/l	Note 10

trichloroethene			
Trihalomethanes: total	100	µg/l	Notes 2 and 11
Vinyl chloride	0.50	µg/l	Note 1

Note 1: The parametric value refers to the residual monomer concentration in the water as calculated according to specifications of the maximum release from the corresponding polymer in contact with the water.

Note 2: Where possible, without compromising disinfection, a relevant person (in relation a supply of water) must strive for a lower value.

Note 3: The parametric value applies to a sample of water obtained by an adequate sampling method at the tap and taken so as to be representative of a weekly average value ingested by consumers of the water. Where appropriate the sampling and monitoring methods must be applied in accordance with any guidelines under Article 7(4) of the Directive. Each relevant person and each enforcing authority in relation to the water must take account of the occurrence of peak levels that may cause adverse effects on human health.

Note 4: When implementing measures to achieve compliance with this parametric value, relevant persons and enforcing authorities (in relation supplies of water to premises) must progressively give priority where lead concentrations in the water are highest.

Note 5: The additional parametric value of 0.10 mg/l applies only if the water is subject to treatment to improve its quality. The point of compliance for this additional parametric value is the point at which the water flows out from the treatment works.

Note 6: “Pesticide” means an organic insecticide, organic herbicide, organic fungicide, organic nematocide, organic acaricide, organic algicide, organic rodenticide, organic slimicide, a related product (including growth regulator) and any relevant metabolite, degradation or reaction product. Only those pesticides which are likely to be present in a supply of water need to be monitored.

Note 7: “Other pesticide” means a pesticide other than aldrin, dieldrin, heptachlor and heptachlor epoxide. The parametric value applies to each “other pesticide” individually.

Note 8: The parametric value for this parameter is the sum of all individual pesticides detected and quantified in the monitoring procedure.

Note 9: The parametric value for this parameter is the sum of the concentrations of benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(ghi)perylene and indeno(1,2,3-cd)pyrene.

Note 10: The parametric value for this parameter is the sum of the concentrations of tetrachloroethene and trichloroethene.

Note 11: The parametric value for this parameter is the sum of chloroform, bromoform, dibromochloromethane, bromodichloromethane.

PART C

Indicator parameters

<i>Parameter</i>	<i>Parametric value</i>	<i>Unit</i>	<i>Notes</i>
Aluminium	200	µg/l	
Ammonium	0.50	mg/l	
Chloride	250	mg/l	Note 1
<i>Clostridium perfringens</i> (including spores)	0	number/100 ml	
Colour	Acceptable to consumers and no abnormal change		

Colour	20	mg/l Pt/Co	
Conductivity	2500	µS/cm at 20 °C	Note 1
Hydrogen ion concentration	≥ 6.5 and ≤ 9.5	pH units	Notes 1 and 3
Iron	200	µg/l	
Manganese	50	µg/l	
Odour	Acceptable to consumers and no abnormal change		
Oxidisability	5.0	mg/l O ₂	Note 4
Sulphate	250	mg/l	Note 1
Sodium	200	mg/l	
Taste	Acceptable to consumers and no abnormal change		
Colony count 22 °C	No abnormal change	number/1 ml	
Coliform bacteria	0	number/100 ml	Note 5
Total organic carbon	No abnormal change		Note 6
Turbidity	Acceptable to consumers and no abnormal change		Note 7

Parametric values for radon, tritium and indicative dose—

<i>Parameter</i>	<i>Parametric value</i>	<i>Unit</i>	<i>Notes</i>
Radon	100	Bq/l	Note 8
Tritium	100	Bq/l	Note 9
Indicative dose	0.10	mSv	

Note 1: The water must not be aggressive.

Note 2: This parameter must be measured if the water originates from, or is influenced by, surface water.

Note 3: For still water put into bottles or containers, the minimum value may be reduced to 4.5 pH units. For water put into bottles or containers which is naturally rich in or artificially enriched with carbon dioxide, the minimum value may be lower.

Note 4: This parameter need not be measured if total organic carbon is analysed.

Note 5: For water put into bottles or containers the unit is number/250 ml.

Note 6: This parameter need not be measured for supplies of less than 10,000 m³ a day.

Note 7: If the water is subject to treatment to improve its quality, each relevant person and each enforcing authority in relation to the water must strive to ensure that the water, at the point at which it flows out from the treatment works, does not exceed 1.0 nephelometric turbidity units.

Note 8: Remedial action is to be deemed justified on radiological protection grounds, without further consideration, where radon concentrations exceed 1,000 Bq/l.

Note 9: Elevated levels of tritium may indicate the presence of other artificial radionuclides. If the tritium concentration exceeds its parametric value, each enforcing authority in relation to the water must also carry out an analysis of the presence of other artificial radionuclides.

SCHEDULE 4 MONITORING

Regulation 20(2) and (3)

PART A

Monitoring programmes

1. Monitoring programmes for water must—

- (a) verify that—
 - (i) the measures in place to control risks to human health throughout the water supply chain (from the catchment area through abstraction, treatment and storage to distribution) are working effectively; and
 - (ii) water at the point of compliance meets the water quality standards;
- (b) provide information on the quality of water supplied to demonstrate that—
 - (i) the water quality standards are being met; and
 - (ii) the parametric values in the first column of Table C are not being exceeded; and
- (c) identify the most appropriate means of mitigating the risk to human health.

2.—(1) Pursuant to regulation 8, each enforcing authority, in relation to water, must establish a monitoring programme for the water which complies with the parameters and frequencies set out in Part B of this schedule which consist of—

- (a) collection and analysis of discrete water samples; or
- (b) measurements recorded by a continuous monitoring process.

(2) In addition, monitoring programmes may consist of—

- (a) inspections of records of the functionality and maintenance status of equipment; and
- (b) inspections of the catchment area, water abstraction, treatment, storage and distribution infrastructure.

3. The monitoring programme may be based on a risk assessment as set out in Part C of this schedule.

4. Each enforcing authority must ensure that its monitoring programme is reviewed on a continuous basis, and updated or reconfirmed at least every 5 years.

PART B

Standard parameters and frequencies

1.—(1) A monitoring programme must take into account—

- (a) each parameter; and
- (b) any other micro-organism, parasite or substance which needs to be monitored by virtue of regulation 19(2) or (3),

including those that are important for assessing the impact of any part of a private water supply system on the quality of water at a point of compliance.

(2) When choosing appropriate parameters and other micro-organisms, parasites or substances for monitoring (as required by, or in accordance with, this schedule), local conditions for each private water supply system must be taken into consideration.

2.—(1) The following parameters (“Group A parameters”) must be monitored at least at the minimum frequencies determined in accordance with the table in this Part—

- (a) *Escherichia coli*, coliform bacteria, colony count 22 °C, colour, turbidity, taste, odour, hydrogen ion concentration (pH), and conductivity; and
- (b) any other parameter, or other micro-organism, parasite or substance, (except radon, tritium and indicative dose) identified as relevant in the monitoring programme—
 - (i) by virtue of regulation 19(2); or
 - (ii) where relevant, through a risk assessment.

(2) Ammonium and nitrite must be included in Group A, if chloramination is used.

(3) Aluminium and iron must be included in Group A, if used as water treatment chemicals.

3. Other parameters, except radon, tritium and indicative dose(a), (“Group B parameters”) must be monitored at least at the frequencies determined in accordance with the table below.

Minimum frequency of sampling and analysis for compliance monitoring

<i>Volume of water (in m³) distributed or produced each day within a supply zone (Notes 1 and 2)</i>		<i>Group A parameters: number of samples per year</i>	<i>Group B parameters: number of samples per year</i>
> 0	≤ 100	1	1
> 100	≤ 1,000	4	1
> 1,000	≤ 10,000	4 for the first 1,000 m ³ /day of the total volume, plus 3 for each additional 1,000 m ³ /day and part thereof	1 for the first 1,000 m ³ /day of the total volume, plus 1 for each additional 4,500 m ³ /day and part thereof
> 10,000	≤ 100,000	4 for the first 1,000 m ³ /day of the total volume, plus 3 for each additional 1,000 m ³ /day and part thereof	3 for the first 10,000 m ³ /day of the total volume, plus 1 for each additional 10,000 m ³ /day and part thereof
> 100,000		4 for the first 1,000 m ³ /day of the total volume, plus 3 for each additional 1,000 m ³ /day and part thereof	12 for the first 100,000 m ³ /day of the total volume, plus 1 for each additional 25,000 m ³ /day and part thereof

Note 1: The volumes are calculated as averages taken over a year.

Note 2: The number of inhabitants in a supply zone may be used instead of the volume of water to determine the minimum frequency, assuming water consumption of 200 litres/day per person.

PART C

Deviation from standard parameters and frequencies

1. An enforcing authority may (or, where required, must), in accordance with this Part, deviate from the requirements of paragraphs 2 and 3 in Part B of this schedule.

2. Based on the results of a risk assessment, the list of parameters in Part B of this schedule (including any other micro-organism, parasite or substance included in the Group A parameters), must be extended and/or the minimum sampling frequencies under that Part increased if—

- (a) the list of parameters or frequencies required to be monitored under that Part B is not sufficient to fulfil the obligations imposed by regulation 19(1), (3) and (4);
- (b) additional monitoring is required by regulation 19(2); or
- (c) this is necessary to verify the matters in paragraph 1(a) of Part A of this schedule.

(a) The minimum sampling and analysis frequencies for radon, tritium and indicative dose are specified in Part E of this schedule.

3. Subject to paragraph 4, based on the results of a risk assessment the list of parameters in Part B of this schedule (including any other micro-organism, parasite or substance included in the Group A parameters) and the sampling frequencies under that Part B may be reduced, provided that the following conditions are met—

- (a) the frequency of sampling for *Escherichia coli* must not be reduced below the minimum frequency required by that Part B; and
- (b) for other parameters in the list—
 - (i) the location and frequency of sampling must be determined in relation to the parameter's origin, as well as the variability and long-term trend of its concentration, taking into account the water quality standards;
 - (ii) to reduce the minimum sampling frequency for a parameter under Part B of this schedule, the results obtained from samples collected at regular intervals over a period of at least 3 years from sampling points representative of the whole supply zone must all be less than 60 % of the parametric value;
 - (iii) to remove a parameter from the list of parameters to be monitored under Part B of this schedule, the results obtained from samples collected at regular intervals over a period of at least 3 years from points representative of the whole supply zone must all be less than 30 % of the parametric value; and
 - (iv) the removal of a parameter from the list of parameters to be monitored under Part B of this schedule must be based on the result of the risk assessment, informed by the results of monitoring of sources of water and confirming that human health is protected from the adverse effects of any contamination of water.

4.—(1) The minimum sampling frequency for a parameter under Part B of this schedule (including any other micro-organism, parasite or substance included in the Group A parameters) may be reduced under paragraph 3(b)(ii) only if the risk assessment confirms that no factor (that can be reasonably anticipated) is likely to cause deterioration of the quality of the water.

(2) Any such parameter may be removed from the list of parameters to be monitored by an enforcing authority under paragraph 3(b)(iii) only if—

- (a) the risk assessment confirms that no factor (that can be reasonably anticipated) is likely to cause deterioration of the quality of the water; and
- (b) the Drinking Water Quality Regulator for Scotland, by notice to the enforcing authority, consents to the removal of the parameter from the list of parameters to be monitored in relation to a supply of water (or in relation to more than one supply of water).

(3) The Drinking Water Quality Regulator for Scotland may not consent, under paragraph (2)(b), to the removal of any of the following from the list of parameters to be monitored—

- (a) enterococci, *Escherichia coli*, coliform bacteria, colony count 22 °C, colour, turbidity or hydrogen ion concentration (pH);
- (b) iron, lead or manganese;
- (c) where the water is supplied to premises within a nitrate vulnerable zone, nitrate; or
- (d) any other parameter, or other micro-organism, parasite or substance, identified (for the time being) as relevant in the monitoring programme in relation to a supply of water—
 - (i) by virtue of regulation 19(2); or
 - (ii) where relevant, through a risk assessment.

(4) In sub-paragraph (3) “nitrate vulnerable zone” means any area of land designated as a nitrate vulnerable zone by regulation 2 of the Designation of Nitrate Vulnerable Zones (Scotland) Regulations 2015(a).

(a) S.S.I. 2015/376.

PART D

Sampling methods and sampling points

- 1.—(1) Sampling points must be determined so as to ensure compliance with the points of compliance.
 - (2) In the case of supply of water in pipes to any premises used for a commercial or public activity, the sampling points must include a point of compliance within each premises.
 - (3) In the case of a supply of water in pipes to premises (including any premises used for a commercial or public activity), an enforcing authority may take samples of the water within the supply zone or at a treatment works for a particular parameter—
 - (a) if it can be demonstrated that there would be no adverse change to the measured value of the parameter concerned; and
 - (b) in the case of any premises used for a commercial or public activity, the Drinking Water Quality Regulator for Scotland consents to the samples being taken within the supply zone or at the treatment works for the particular parameter.
 - (4) In a case where an enforcing authority may take samples of the water within the supply zone or at a treatment works for a particular parameter, the point at which the samples are taken is to be treated for the purposes of these Regulations as the point of compliance for the parameter.
 - (5) As far as possible, the number of samples must be distributed equally in time and location.
2. Subject to paragraph 1, sampling at the point of compliance must meet the following requirements—
 - (a) compliance samples for certain chemical parameters (in particular copper, lead and nickel) must be taken at the consumer's tap without prior flushing. A random daytime sample of one litre volume is to be taken. As an alternative, the enforcing authority may use fixed stagnation time methods that better reflect their national situation, provided that, at the supply zone level, this does not result in fewer cases of non-compliance than using the random daytime method; and
 - (b) compliance samples for microbiological parameters at the point of compliance must be taken and handled according to EN ISO 19458, sampling purpose B.
3. Sampling of water in a private water supply system, with the exception of sampling at the consumers' tap, must be in accordance with ISO 5667-5. For microbiological parameters, sampling of water in the private water supply system must be taken and handled according to EN ISO 19458, sampling purpose A.

PART E

Radioactive substances

General principles and monitoring frequencies

- 1.—(1) Subject to sub-paragraph (2), each enforcing authority in relation to a supply of water must ensure that the water is monitored for radon, tritium and indicative dose.
 - (2) Where the Scottish Ministers, by notice to the enforcing authority, confirm that they have established that radon, tritium or, as the case may be, indicative dose is not likely to be present in relation one or more supplies of water, for a period specified in the notice, in concentrations which could exceed the parametric value for the parameter, the enforcing authority is not required to monitor any such supply of water for the parameter during the period specified.
 - (3) In case of naturally occurring radionuclides—
 - (a) where previous results show that the concentration of radionuclides in one or more supplies of water is stable, the minimum sampling and analysis frequencies are to be decided by the Scottish Ministers, and confirmed by notice to the enforcing authority, taking into consideration the risk to human health; and
 - (b) where the Scottish Ministers, by notice to the enforcing authority, confirm that they are satisfied (on the basis of representative surveys, monitoring data or other reliable information) that levels

of radon, tritium and the calculated indicative dose in one or more supplies of water will, for a period specified in the notice, remain below the parametric value for each parameter at the point of compliance, the enforcing authority is not required to monitor any such supply for these parameters during the period specified.

(4) Where sub-paragraph (3)(b) applies, the Scottish Ministers must communicate the grounds for the decision to the European Commission and provide the Commission with the necessary documentation supporting that decision, including the findings of any surveys, monitoring or investigations carried out.

Radon

2.—(1) Subject to paragraphs 5 and 6, the enforcing authority must ensure that representative surveys are undertaken to determine the scale and nature of likely exposures to radon in the water originating from different types of ground water sources and wells in different geological areas.

(2) The surveys must be designed in such a way that underlying factors, and especially the geology and hydrology of the area, radioactivity of rock or soil, and well type, can be identified and used to direct further action to areas of likely high exposure.

(3) Monitoring of radon concentrations must be carried out if the enforcing authority has reason to believe, on the basis of the results of the representative surveys or other reliable information, that the parametric value for radon might be exceeded.

Tritium

3.—(1) Subject to paragraphs 5 and 6, the enforcing authority must monitor the water for tritium where—

- (a) an anthropogenic source of tritium or other artificial radionuclides is present within the catchment area for the supply; and
- (b) it cannot be shown on the basis of other surveillance programmes or investigations that the level of tritium is below the parametric value for tritium.

(2) Where monitoring for tritium is required by sub-paragraph (1), samples must be taken in accordance with paragraph 6.

(3) If the concentration of tritium in any such sample exceeds the parametric value for tritium, the enforcing authority must carry out an investigation of the presence of other artificial radionuclides.

Indicative dose

4.—(1) The enforcing authority must monitor the water for indicative dose where—

- (a) a source of artificial radioactivity or elevated natural radioactivity is present; and
- (b) it cannot be shown on the basis of other representative monitoring programmes or other investigations that the indicative dose is below the parametric value for that parameter.

(2) Where sub-paragraph (1) requires monitoring (of radionuclide levels) only in relation to a source of artificial radioactivity, samples must be taken in accordance with paragraph 6.

(3) Where sub-paragraph (1) requires monitoring (of radionuclide levels) in relation to a source of elevated natural radioactivity, the enforcing authority must determine the frequency of the monitoring required of—

- (a) gross alpha activity;
- (b) gross beta activity; or
- (c) individual natural radionuclides,

depending on the screening strategy adopted pursuant to Part B of this schedule.

(4) Where sub-paragraph (3) applies, the frequency determined may vary from a single check measurement to the frequency which would otherwise apply by virtue of paragraph 6.

(5) Where a single check for natural radioactivity is specified under sub-paragraph (3), the enforcing authority must carry out a further check if any change occurs in relation to the supply which is likely to influence the concentrations of radionuclides in the supply.

Water treatment

5. Where the water is treated to reduce the level of radionuclides, the enforcing authority must monitor the water for indicative dose, radon and tritium in accordance with paragraph 6 to verify the continued efficacy of that treatment.

Minimum sampling and analysis frequencies

6. The minimum sampling and analysis frequency for the monitoring of radon, tritium and indicative dose in water (where required by this schedule) from a private water supply system or from a tanker or used in a food production undertaking is set out in the following table.

Minimum sampling and analysis frequencies for radon, tritium and indicative dose

<i>Volume of water (in m³) distributed or produced each day within a supply zone (Note 1)</i>		<i>Number of samples per year (Notes 2 and 3)</i>
> 0	≤ 100	1
> 100	≤ 1,000	1
> 1,000	≤ 10,000	1, plus 1 for each 3,300 m ³ /day and part thereof of the total volume
> 10,000	≤ 100,000	3, plus 1 for each 10,000 m ³ /day and part thereof of the total volume
> 100,000		10, plus 1 for each 25,000 m ³ /day and part thereof of the total volume

Note 1: The volumes are calculated as averages taken over a year. The number of inhabitants in a supply zone may be used instead of the volume of water to determine the minimum frequency, assuming water consumption of 200 litres/day per person.

Note 2: As far as possible, the number of samples must be distributed equally in time and location.

Note 3: In the event of intermittent short-term supply the monitoring frequency of water distributed by tankers must be decided by each enforcing authority in relation to the water.

Averaging

7. Where the parametric value for radon, tritium or, as the case may be, indicative dose is exceeded in a sample of the water, the Drinking Water Quality Regulator for Scotland must specify, by notice to the enforcing authority, the extent of resampling necessary to ensure that the measured values are representative of an average activity concentration for a full year.

PART F

Indicative dose

Monitoring for compliance with the indicative dose

1.—(1) Each enforcing authority, in relation to water, may use reliable screening strategies to indicate the presence of radioactivity in the water.

(2) These strategies may include screening for—

- (a) certain radionuclides or an individual radionuclide; or
- (b) gross alpha activity or gross beta activity.

Screening for certain radionuclides or for an individual radionuclide

2.—(1) Where screening of the water is carried out for certain radionuclides or for an individual radionuclide, the enforcing authority must carry out an analysis of additional radionuclides if, in relation to any supply referred to in paragraph 1—

- (a) one of the activity concentrations of a radionuclide listed in column 2 of the table below exceeds 20% of the corresponding derived concentration in column 3; or
- (b) the tritium concentration exceeds the parametric value for tritium.

(2) The enforcing authority must, in deciding which radionuclides require to be measured for each supply, take into account all relevant information about likely sources of radioactivity.

<i>Origin</i>	<i>Radionuclide (Note 1)</i>	<i>Derived concentration (Bq/l)</i>	<i>Notes</i>
Natural	U-238	3.0	Note 2
	U-234	2.8	Note 2
	Ra-226	0.5	
	Ra-228	0.2	
	Pb-210	0.2	
	Po-210	0.1	
	Artificial	C-14	240
Sr-90		4.9	
Pu-239 / Pu-240		0.6	
Am-241		0.7	
Co-60		40	
Cs-134		7.2	
Cs-137		11	
I-131		6.2	

Note 1: This table includes values for the most common natural and artificial radionuclides. These are precise values, calculated for a dose of 0.1 mSv, an annual intake of 730 litres and using the dose coefficients laid down in Table (A) of Annex III to Council Directive 96/29/Euratom laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation(a). Derived concentrations for other radionuclides may be calculated on the same basis.

Note 2: This allows only for the radiological properties of uranium, not for its chemical toxicity.

Screening for gross alpha activity and gross beta activity

3.—(1) The enforcing authority may use screening strategies for gross alpha activity and gross beta activity (or, where appropriate, residual beta activity after subtraction of the potassium-40 activity) to monitor the water for indicative dose.

(2) Subject to sub-paragraph (3), screening levels must be set at—

- (a) 0.1 Bq/l for gross alpha activity; and
- (b) 1.0 Bq/l for gross beta activity.

(3) The enforcing authority may set alternative levels to those specified in sub-paragraph (2) if it can demonstrate that these will ensure that an indicative dose of 0.1 mSv is not exceeded.

(4) If the gross alpha activity is less than 0.1 Bq/l and the gross beta activity is less than 1.0 Bq/l, the enforcing authority may assume that the indicative dose is less than 0.1 mSv.

(5) Where sub-paragraph (4) applies, the enforcing authority is not required to carry out a radiological investigation unless it is aware—

(a) OJ L 159, 29.6.1996, p. 1., as amended by Corrigendum (OJ L 314, 4.12.1996, p. 20).

- (a) that specific radionuclides are present in the water; and
- (b) that these are liable to cause an indicate dose in excess of 0.1 mSv.

(6) If the gross alpha activity exceeds 0.1 Bq/l or the gross beta activity exceeds 1.0 Bq/l, the enforcing authority must carry out an analysis for specific radionuclides.

(7) The enforcing authority must, in deciding which radionuclides require to be measured for the purposes of sub-paragraph (6), take into account all relevant information about likely sources of radioactivity.

(8) If elevated levels of tritium are detected in a sample, the enforcing authority must also measure the gross alpha activity and gross beta activity in that sample.

Calculation of the indicative dose

4.—(1) The indicative dose must be calculated from—

- (a) the measured radionuclide concentrations and the dose coefficients laid down in Table (A) of Annex III to Council Directive 96/29/Euratom(a); or
- (b) more recent information recognised by the Scottish Ministers,

on the basis of an annual intake of water of 730 litres for adults.

(2) Where the following formula is satisfied, the enforcing authority may assume that the indicative dose is less than 0.1 mSv and that no further investigation is required—

$$\sum_{i=1}^n \frac{C_i (obs)}{C_i (der)} \leq 1$$

where—

“ $C_i (obs)$ ” refers to the observed concentration of radionuclide “ i ”;

“ $C_i (der)$ ” refers to derived concentration of radionuclide “ i ”; and

“ n ” refers to the number of radionuclides detected.

(a) Table (A) lays down ingestion dose coefficients for members of the public.

SCHEDULE 5

Regulation 21(1) and (2)

METHODS OF ANALYSIS

The enforcing authority must ensure that the methods of analysis used for the purposes of monitoring and demonstrating compliance with these Regulations are validated and documented in accordance with EN ISO/IEC 17025 or other equivalent standards accepted at international level. The enforcing authority must ensure that laboratories or parties contracted by laboratories apply quality management system practices in accordance with EN ISO/IEC 17025 or other equivalent standards accepted at international level.

In the absence of an analytical method meeting the minimum performance criteria set out in Part B of this schedule, the enforcing authority must ensure that monitoring is carried out using best available techniques not entailing excessive costs.

PART A

Microbiological parameters

The following principles for methods of microbiological parameters are given either for reference, whenever a CEN/ISO method is given, or for guidance. The enforcing authority may use alternative methods, providing the provisions of regulation 21 are met.

The methods for microbiological parameters are—

- (a) *Escherichia coli* and coliform bacteria (EN ISO 9308-1 or EN ISO 9308-2);
- (b) enterococci (EN ISO 7899-2);
- (c) *Pseudomonas aeruginosa* (EN ISO 16266);
- (d) enumeration of culturable microorganisms — colony count 22 °C (EN ISO 6222);
- (e) enumeration of culturable microorganisms — colony count 36 °C (EN ISO 6222); and
- (f) *Clostridium perfringens* including spores (EN ISO 14189).

PART B

Chemical and indicator parameters

1.—(1) Subject to sub-paragraph (3), for a parameter referred to in the first column of Table 1, the method of analysis used must, as a minimum, be capable of measuring concentrations equal to the parametric value for the parameter with—

- (a) a limit of quantification of 30 % or less of the parametric value; and
- (b) an uncertainty of measurement as specified in Table 1.

(2) The result of the analysis for a parameter in Table B or Table C must be expressed using at least the same number of significant figures as the parametric value for the parameter in the table.

(3) Until 31st December 2019, the enforcing authority may use ‘trueness’, ‘precision’ and ‘limit of detection’ in Table 2 as an alternative set of performance characteristics (instead of using the limit of quantification and the uncertainty of measurement referred to in sub-paragraph (1)).

(4) The uncertainty of measurement specified in Table 1 must not be used as an additional tolerance to the parametric values.

TABLE 1**Minimum performance characteristic: uncertainty of measurement**

<i>Parameter</i>	<i>Uncertainty of measurement (% of parametric value, except pH) (Note 1)</i>	<i>Notes(a)</i>
Aluminium	25	
Ammonium	40	
Antimony	40	
Arsenic	30	
Benzo(a)pyrene	50	Note 5
Benzene	40	
Boron	25	
Bromate	40	
Cadmium	25	
Chloride	15	
Chromium	30	
Conductivity	20	
Copper	25	
Cyanide	30	Note 6
1,2-dichloroethane	40	
Fluoride	20	
Hydrogen ion concentration pH (expressed in pH units)	0.2	Note 7
Iron	30	
Lead	25	
Manganese	30	
Mercury	30	
Nickel	25	
Nitrate	15	
Nitrite	20	
Oxidisability	50	Note 8
Pesticides	30	Note 9
Polycyclic aromatic hydrocarbons	30	Note 10
Selenium	40	
Sodium	15	
Sulphate	15	
Tetrachloroethene	30	Note 11
Trichloroethene	40	Note 11
Trihalomethanes: total	40	Note 10
Total organic carbon	30	Note 12
Turbidity	30	Note 13

(a) Acrylamide, epichlorohydrin and vinyl chloride to be controlled by product specification.

TABLE 2**Minimum performance characteristics: trueness, precision and limit of detection**

<i>Parameter</i>	<i>Trueness (% of parametric value, except for pH) (Note 2)</i>	<i>Precision (% of parametric value, except for pH) (Note 3)</i>	<i>Limit of detection (% of parametric value, except for pH) (Note 4)</i>	<i>Notes(a)</i>
Aluminium	10	10	10	
Ammonium	10	10	10	
Antimony	25	25	25	
Arsenic	10	10	10	
Benzo(a)pyrene	25	25	25	
Benzene	25	25	25	
Boron	10	10	10	
Bromate	25	25	25	
Cadmium	10	10	10	
Chloride	10	10	10	
Chromium	10	10	10	
Conductivity	10	10	10	
Copper	10	10	10	
Cyanide	10	10	10	Note 6
1,2-dichloroethane	25	25	10	
Fluoride	10	10	10	
Hydrogen ion concentration pH (expressed in pH units)	0.2	0.2		Note 7
Iron	10	10	10	
Lead	10	10	10	
Manganese	10	10	10	
Mercury	20	10	20	
Nickel	10	10	10	
Nitrate	10	10	10	
Nitrite	10	10	10	
Oxidisability	25	25	25	Note 8
Pesticides	25	25	25	Note 9
Polycyclic aromatic hydrocarbons	25	25	25	Note 10
Selenium	10	10	10	
Sodium	10	10	10	
Sulphate	10	10	10	
Tetrachloroethene	25	25	10	Note 11
Trichloroethene	25	25	10	Note 11
Trihalomethanes: total	25	25	10	Note 10
Turbidity	25	25	25	

Notes to Table 1 and Table 2

Note 1: Uncertainty of measurement is a non-negative parameter characterising the dispersion of the quantity values being attributed to a measurand, based on the information used. The performance criterion for measurement uncertainty ($k = 2$) is the percentage of the parametric value stated in the table or better.

(a) Acrylamide, epichlorohydrin and vinyl chloride to be controlled by product specification.

Measurement uncertainty must be estimated at the level of the parametric value, unless otherwise specified.

Note 2: Trueness is a measure of systematic error, i.e. the difference between the mean value of the large number of repeated measurements and the true value. Further specifications are those set out in ISO 5725.

Note 3: Precision is a measure of random error and is usually expressed as the standard deviation (within and between batches) of the spread of results from the mean. Acceptable precision is twice the relative standard deviation. This term is further specified in ISO 5725.

Note 4: Limit of detection is either—

- (a) three times the standard deviation within a batch of a natural sample containing a low concentration of the parameter; or
- (b) five times the standard deviation of a blank sample (within a batch).

Note 5: If the value of uncertainty of measurement cannot be met, the best available technique should be selected (up to 60 %).

Note 6: The method determines total cyanide in all forms.

Note 7: Values for trueness, precision and uncertainty of measurement are expressed in pH units.

Note 8: Reference method EN ISO 8467.

Note 9: The performance characteristics for individual pesticides are given as an indication. Values for the uncertainty of measurement as low as 30 % can be achieved for several pesticides, higher values up to 80 % may be allowed for a number of pesticides.

Note 10: The performance characteristics apply to individual substances, specified at 25 % of the parametric value in Table B.

Note 11: The performance characteristics apply to individual substances, specified at 50 % of the parametric value in Table B.

Note 12: The uncertainty of measurement should be estimated at the level of 3 mg/l of the total organic carbon. CEN 1484 Guidelines for the determination of total organic carbon and dissolved organic carbon must be used.

Note 13: The uncertainty of measurement must be estimated at the level of 1.0 NTU (nephelometric turbidity units) in accordance with EN ISO 7027.

PART C

Indicative dose

For each parameter or radionuclide listed in column 1 of the table below, the method of analysis used must be capable of measuring activity concentrations with at least the limit of detection specified for that parameter or radionuclide in column 2.

TABLE 3**Minimum performance characteristics: limit of detection**

<i>Parameter / radionuclide</i>	<i>Limit of detection (in Bq/l) (Notes 1 and 2)</i>	<i>Notes</i>
Tritium	10 ^(c)	Note 3
Radon	10 ^(c)	Note 3
gross alpha activity	0.04 ^(d)	Note 4
gross beta activity	0.4 ^(d)	Note 4
U-238	0.02	
U-234	0.02	
Ra-226	0.04	
Ra-228	0.02 ^(e)	Note 5
Pb-210	0.02	
Po-210	0.01	
C-14	20	
Sr-90	0.4	
Pu-239 / Pu-240	0.04	
Am-241	0.06	
Co-60	0.5	
Cs-134	0.5	
Cs-137	0.5	
I-131	0.5	

Notes to Table 3

Note 1: The limit of detection must be calculated according to the ISO standard 11929:2010 entitled “Determination of the characteristic limits (decision threshold, detection limit and limits of the confidence interval) for measurements of ionising radiation - Fundamentals and application” (as it was first published), with probabilities of errors of 1st and 2nd kind of 0.05 each.

Note 2: Measurement uncertainties must be calculated and reported as complete standard uncertainties, or as expanded standard uncertainties with an expansion factor of 1.96, according to the ISO IEC Guide 98-3:2008 entitled “*Guide to the expression of uncertainty in measurement*” (as it was first published).

Note 3: The limit of detection for tritium and for radon is 10% of the corresponding parametric value for the parameter.

Note 4: The limit of detection for gross alpha activity and gross beta activities is 40% of the screening values of 0.1 Bq/l and 1.0 Bq/l respectively.

Note 5: This limit of detection applies only to initial screening for indicative dose for a new water source. If initial checking indicates that it is unlikely that Ra-228 exceeds 20% of the derived concentration, the limit of detection may be increased to 0.08 Bq/l for routine Ra-228 nuclide specific measurements, until a subsequent re-check is required.

SCHEDULE 6 DEROGATIONS

Regulations 3(1) and 15(3)

Application

1.—(1) A water supplier who introduces water into, or uses, a private water supply system for the purposes of supplying water to the premises of another person may, in respect of the water supplied, make an application in writing to the enforcing authority (in relation to the water) for a derogation from a parametric value in Table B.

(2) In relation to a supply of water to premises in the area of an enforcing authority, a person who owns or occupies the premises may make an application in writing to the enforcing authority for a derogation from a parametric value in Table B.

(3) The application must include the things referred to in paragraph 3(3)(a) to (f).

Notification of decision

2.—(1) The enforcing authority may, by notice to the applicant, either—

- (a) refuse to grant a derogation; or
- (b) subject to paragraph 3, grant a derogation.

(2) The enforcing authority must, as soon as practicable after giving the notice to the applicant, send a copy of the notice to the Drinking Water Quality Regulator for Scotland.

Conditions

3.—(1) A derogation may only be granted—

- (a) if it does not pose a potential danger to human health;
- (b) the supply of water in question cannot be maintained by any other reasonable means; and
- (c) it is limited to as short a period as possible (up to a maximum period of 3 years).

(2) If the enforcing authority refuses to grant a derogation, it must give reasons in the notice.

(3) If the enforcing authority grants a derogation, it must specify in the notice—

- (a) the grounds for the derogation;
- (b) the parameter concerned, previous relevant monitoring results, and the maximum permissible value under the derogation;
- (c) the geographical area, the quantity of water supplied each day, the population concerned and whether or not any relevant food-production undertaking would be affected;
- (d) an appropriate monitoring scheme, with an increased monitoring frequency where necessary;
- (e) a summary of the plan for the necessary remedial action, including a timetable for the work and an estimate of the cost and provisions for reviewing; and
- (f) the duration of the derogation.

(4) Before the end of the duration of a derogation (granted under this regulation), the enforcing authority must carry out a review to determine whether sufficient progress has been made (in relation to the plan and timetable for the necessary remedial action).

Second derogation

4.—(1) The enforcing authority may, if appropriate, grant a further derogation (“second derogation”) from a parametric value of up to 3 years in respect of water supplied to premises if—

- (a) a derogation from the parametric value (“first derogation”) was previously granted; and
- (b) the first derogation was in respect of water supplied to the same premises.

(2) Paragraphs 1 to 3 apply to a second derogation as they apply to a first derogation.

Supplementary

5.—(1) If the enforcing authority considers that a failure to meet a parametric value was trivial, and if action taken in accordance with regulation 22(c) is sufficient to remedy the problem within 30 days, paragraph 3(3) does not apply and the enforcing authority must instead specify in the notice only—

- (a) the maximum permissible value under the derogation; and
- (b) the time allowed to remedy the problem.

(2) Sub-paragraph (1) does not apply if a failure to comply with a parametric value for a given water supply has occurred on more than 30 days on aggregate during the previous 12 months.

Notification

6. Where a derogation is granted to an applicant, the applicant must ensure—

- (a) that the population affected by any such derogation is promptly informed in an appropriate manner of the derogation and of the conditions governing it; and
- (b) where necessary, that advice is given to particular population groups for which the derogation could present a special risk.

REMEDIATION NOTICES

Power to serve remediation notice

1.—(1) Where the enforcing authority reasonably believes that a supply of water to a point of compliance in its area—

- (a) poses a potential danger to human health;
- (b) has failed to meet one or more of the water quality standards and the failure is likely to recur; or
- (c) is failing to meet one or more of the water quality standards and the failure is likely to continue or to recur or both,

the enforcing authority may serve a remediation notice on a person who is, in relation to the supply of water, a relevant person.

(2) In considering whether to serve remediation notice the enforcing authority may consult—

- (a) the local authority for any area affected by the supply of water; and
- (b) the Health Board for any such area.

(3) A remediation notice must specify—

- (a) the supply of water to which it relates;
- (b) the enforcing authority's reasons for believing (as the case may be) that the supply of water—
 - (i) poses a potential danger to human health;
 - (ii) has failed to meet one or more of the water quality standards and the failure is likely to recur; or
 - (iii) is failing to meet one or more of the water quality standards and the failure is likely to continue or to recur or both;
- (c) the steps which the enforcing authority requires the person to take for the purposes of—
 - (i) protecting human health (including, where appropriate, action to prohibit the supply of water or to restrict its use, or to provide an alternative supply of water);
 - (ii) restoring the quality of the water supplied, or to be supplied, so that it meets (and continues to meet) the water quality standards; or
 - (iii) protecting the quality of the water supplied, or to be supplied, (including its source) so that it meets (and continues to meet) the water quality standards; and
- (d) the date on which the notice is to take effect.

(4) A remediation notice may specify different dates by which different steps specified under sub-paragraph (3)(c) must be completed.

(5) The date referred to in sub-paragraph (3)(d) must be no earlier than the day following the last day on which an appeal may be brought under paragraph 3(1).

(6) Before serving a remediation notice on a person under sub-paragraph (1), the enforcing authority must serve a copy of the proposed remediation notice on the person and specify a period of at least 14 days, beginning with the date of service of the notice, within which the person may make representations to the enforcing authority about the proposed notice.

(7) The enforcing authority must take into account any representations in relation to the proposed remediation notice duly made by the person and may adjust the notice in light of those representations.

(8) The enforcing authority must—

- (a) send a copy of the remediation notice to the Drinking Water Quality Regulator for Scotland and to any local authority or Health Board consulted by the enforcing authority under sub-paragraph (2); and
- (b) arrange for the notice to be published in such manner as the enforcing authority thinks appropriate for bringing it to the attention of persons affected, or who may be affected, by the supply of water.

Right of appeal against remediation notice

2.—(1) A person on whom a remediation notice has been served may, within a period of 14 days beginning with the date of service, appeal to the sheriff against the notice.

(2) Where an appeal is brought under sub-paragraph (1) the remediation notice is of no effect until the appeal is withdrawn or finally determined.

(3) On an appeal under sub-paragraph (1) the sheriff may make such order as the sheriff thinks fit.

(4) The decision of the sheriff on such an appeal is final.

(5) Where a person has taken the steps required by a remediation notice, the enforcing authority must publish (or arrange for the publication of) information to this effect, in such a manner as the enforcing authority thinks appropriate for bringing it to the attention of persons affected, or who may have been affected, by the supply of water.

Failure to comply with remediation notice

3.—(1) This paragraph applies where, in relation to a remediation notice, a person fails to complete a step specified under paragraph 1(3)(c) by a date specified in relation to that step under paragraph 1(4) (or by such later date as the enforcing authority may have substituted under regulation 34(1)(b)).

(2) Where this regulation applies, the enforcing authority may—

- (a) enter any premises and carry out the work necessary to complete the step; and
- (b) recover from the person any expenses which the enforcing authority reasonably incurs in carrying out, or securing the carrying out, of that work.

(3) The expenses which may be recovered under sub-paragraph (2)(b) include such proportion of the enforcing authority's administrative expenses (including expenses incurred in establishing any of the matters referred to in paragraph 1(1)(a) to (c) and in connection with the remediation notice) as the enforcing authority considers appropriate.

Offences in relation to remediation notice

4.—(1) It is an offence for a person to fail to do anything which a remediation notice requires the person to do (including a failure to complete a step required by a specified date).

(2) It is an offence for a person to intentionally obstruct a person acting in the exercise of any power conferred by paragraph 3(2)(a).

(3) A person who commits an offence under sub-paragraph (1) or (2) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

ENFORCEMENT NOTICES

Power to serve enforcement notice

1.—(1) Where the enforcing authority reasonably believes, in respect of a supply of water to a point of compliance in its area—

- (a) that a person has contravened a requirement of these Regulations and the contravention is likely to recur; or
- (b) that a person is contravening a requirement of these Regulations and the contravention is likely to continue or to recur or both,

and (in either case) that the person is not taking appropriate steps for the purpose of rectifying the contravention or (as the case may be) preventing its recurrence, the enforcing authority may serve on the person an enforcement notice.

(2) In considering whether to serve an enforcement notice the enforcing authority may consult—

- (a) the local authority for any area affected by the contravention; and
- (b) the Health Board for any such area.

(3) An enforcement notice must specify—

- (a) the contravention to which it relates;
- (b) the enforcing authority's reasons for believing (as the case may be) that the contravention—
 - (i) has occurred and is likely to recur; or
 - (ii) is occurring and is likely to continue or to recur or both;
- (c) the date by which the person is required to rectify the contravention or (as the case may be) take steps to prevent its recurrence;
- (d) any particular steps which the enforcing authority requires the person to take for that purpose; and
- (e) the date on which the notice is to take effect.

(4) An enforcement notice may specify different dates by which different steps specified under sub-paragraph (3)(d) must be completed.

(5) The date referred to in paragraph (3)(e) must be no earlier than the day following the last day on which an appeal may be brought under paragraph 2(1).

(6) Before serving an enforcement notice on a person under sub-paragraph (1), the enforcing authority must serve a copy of the proposed enforcement notice on the person and specify a period of at least 14 days, beginning with the date of service of the notice, within which the person may make representations to the enforcing authority about the proposed notice.

(7) The enforcing authority must take into account any representations in relation to the proposed enforcement notice duly made by the person and may adjust the notice in light of those representations.

(8) The enforcing authority must—

- (a) send a copy of an enforcement notice to the Drinking Water Quality Regulator for Scotland and to any local authority or Health Board consulted by the enforcing authority under sub-paragraph (2); and
- (b) arrange for the notice to be published in such manner as the enforcing authority thinks appropriate for bringing it to the attention of persons affected, or who may be affected, by the contravention.

- (9) In sub-paragraph (1), the references to “person” do not include—
- (a) an enforcing authority;
 - (b) the Drinking Water Quality Regulator for Scotland; or
 - (c) the Scottish Ministers.

Right of appeal against enforcement notice

2.—(1) A person on whom an enforcement notice has been served may, within a period of 14 days beginning with the date of service, appeal to the sheriff against the notice.

(2) Where an appeal is brought under sub-paragraph (1) the enforcement notice is of no effect until the appeal is withdrawn or finally determined.

(3) On an appeal under sub-paragraph (1) the sheriff may make such order as the sheriff thinks fit.

(4) The decision of the sheriff on such an appeal is final.

(5) Where a person has rectified the contravention specified in an enforcement notice, the enforcing authority must publish (or arrange for the publication of) information to this effect, in such a manner as the enforcing authority thinks appropriate for bringing it to the attention of persons affected, or who may have been affected, by the contravention.

Failure to comply with enforcement notice

3.—(1) This regulation applies where, in relation to an enforcement notice, a person—

- (a) fails to rectify, or (as the case may be) to take steps to prevent the recurrence of, a contravention specified in the notice by the date specified in relation to the contravention under paragraph 1(3)(c); or
- (b) fails to complete a step specified under paragraph 1(3)(d) by a date specified in relation to that step under paragraph 1(4),

(or, in either case, by such later date as the enforcing authority may have substituted under regulation 34(1)(b)).

(2) Where this regulation applies, the enforcing authority may—

- (a) enter any premises and carry out the work necessary to rectify or prevent the recurrence of the contravention or, as the case may be, to complete the step; and
- (b) recover from the person any expenses which the enforcing authority reasonably incurs in carrying out, or securing the carrying out, of that work.

(3) The expenses which may be recovered under sub-paragraph (2)(b) include such proportion of the enforcing authority’s administrative expenses (including expenses incurred in establishing the contravention and in connection with the enforcement notice) as the enforcing authority considers appropriate.

Offences in relation to enforcement notice

4.—(1) It is an offence for a person to fail to do anything which a remediation notice requires the person to do (including a failure to complete a step required by a specified date).

(2) It is an offence for a person to intentionally obstruct a person acting in the exercise of any power conferred by paragraph 3(2)(a).

(3) A person who commits an offence under sub-paragraph (1) or (2) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

SCHEDULE 9

Regulation 35

POWERS OF ENTRY ETC.: FURTHER PROVISION

Notice of entry

- 1.—(1) Sub-paragraphs (2) to (4) apply to the powers conferred on an enforcing authority by virtue of—
- (a) regulation 30(1);
 - (b) paragraph 3(2)(a) of schedule 7;
 - (c) paragraph 3(2)(a) of schedule 8; and
 - (d) regulation 33(3)(a),

(in this schedule referred to as “the relevant provisions”).

(2) An enforcing authority is entitled to demand entry into any premises as of right by virtue of the relevant provisions only at a reasonable time, except in an emergency.

(3) Unless the premises are premises (other than a dwelling) of a water supplier, the enforcing authority must give 24 hours’ notice of the intended entry to the occupier of the premises.

(4) The powers are exercisable on behalf of an enforcing authority by any person designated in writing by the enforcing authority as a person who may exercise the powers on its behalf.

Warrant to exercise right or power

- 2.—(1) If a sheriff or a justice of the peace is satisfied, by evidence on oath, that—
- (a) there are reasonable grounds for the exercise in relation to any premises of a power conferred by the relevant provisions; and
 - (b) one or more of the conditions specified in sub-paragraph (2) is fulfilled in relation to those premises,

the sheriff or justice may by warrant authorise the enforcing authority to exercise the power in relation to those premises in accordance with the warrant and, if need be, by force.

- (2) The conditions mentioned in sub-paragraph (1) are—
- (a) that the exercise of the power in relation to the premises has been refused;
 - (b) that such a refusal is reasonably apprehended;
 - (c) that the premises are unoccupied;
 - (d) that the occupier is temporarily absent from the premises;
 - (e) that the case is one of urgency;
 - (f) that an application for admission to the premises would defeat the object of the proposed

entry.

(3) A sheriff or justice must not issue a warrant under this schedule by virtue only of being satisfied that a condition specified in sub-paragraph (2)(a) or (b) is fulfilled unless the sheriff or justice is also satisfied—

- (a) that notice of the intention to apply for the warrant has been given to the occupier of the premises, or
- (b) that the giving of such notice would defeat the object of the proposed entry.

(4) A warrant under this schedule continues in force until the purposes for which the warrant was issued have been fulfilled.

Evidence of authority

3. A person entitled to exercise any power conferred by the relevant provisions must, if required to do so, produce written evidence of that entitlement.

Supplementary powers

4. A person entitled to enter any premises by virtue of any power conferred by the relevant provisions is entitled, subject in the case of a power exercisable under a warrant to the terms of the warrant, to take on to the premises such other persons and such equipment as may be necessary.

Duty to secure premises

5. A person who enters any premises in the exercise of any power conferred by the relevant provisions must leave the premises as effectually secured against trespassers as that person found them.

Compensation

6.—(1) Where any person (“the person”) exercises, on behalf of an enforcement authority, any power conferred by the relevant provisions, the enforcing authority must make full compensation to any other person who has sustained loss or damage by reason of—

- (a) the exercise by the person of that power or of any power to take any person or equipment on to the premises in relation to which the power is exercised; or
- (b) the performance of, or failure of the person to perform, the duty imposed by paragraph 5.

(2) Compensation is not payable by virtue of sub-paragraph (1) in respect of any loss or damage if the loss or damage—

- (a) is attributable to the default of the person who sustained it; or
- (b) is loss or damage in respect of which compensation is payable by virtue of any other provision of this Act.

(3) Any dispute as to a person’s entitlement to compensation under this paragraph, or as to the amount of any such compensation, is to be referred to the arbitration of a single arbiter appointed by agreement between the Scottish Ministers and the person who claims to have sustained the loss or damage or, in default of agreement, by the President of the Lands Tribunal for Scotland.

Commercially confidential information

7.—(1) It is an offence for a person who enters any premises in the exercise of a power conferred by these Regulations to make use of or discloses any information obtained by the person on those premises with regard to any manufacturing process or trade secret.

(2) A person who commits an offence under sub-paragraph (1) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

Interpretation

8. For the purposes of paragraphs 5 and 6 a person enters any premises in the exercise of a power conferred by the relevant provisions despite a failure (whether by virtue of the waiver of the requirement by the occupier of the premises or otherwise) to comply with—

- (a) any requirement to enter those premises at a reasonable time or after giving notice of intended entry; or
- (b) the requirement imposed by paragraph 3.

SCHEDULE 10

Regulation 36

RECOVERY OF CERTAIN EXPENSES

Maximum charges

1.—(1) Subject to sub-paragraph (2), an enforcing authority may charge a person for expenses reasonably incurred by it under these Regulations in relation to a supply of water, as follows:—

- (a) for collecting water samples;
- (b) for the analysis of water samples;
- (c) for carrying out a risk assessment; and
- (d) for reviewing a risk assessment.

(2) An enforcing authority may not charge for the collection and analysis of a water sample which was undertaken to confirm or clarify the results of an analysis of a previous water sample.

(3) If, in relation to the supply of water, more than one person may be charged, the enforcing authority must, in determining who is to be charged and any apportionment of that charge, have regard to the terms (if any) on which the water is supplied and the purposes for which it is used.

Recovery of sums charged

2. The enforcing authority may recover as a civil debt any sum charged by the enforcing authority in accordance with paragraph 1.

CONSEQUENTIAL AMENDMENTS

Amendment of the Water (Scotland) Act 1980**1. In the Water (Scotland) Act 1980(a)—**

- (a) in section 76FA(1)(c) (domestic failures where water is supplied to the public by private supply), for the words from “under” to the end substitute “under regulation 18(2) of the Private Water Supplies (Scotland) Regulations 2006”; and
- (b) in section 76HA(2)—
 - (i) omit paragraph (a)(ii);
 - (ii) omit paragraph (ba); and
 - (iii) in paragraph (f), in the text to be inserted, omit ““, Type A supply””.

Amendment of the Private Water Supplies (Scotland) Regulations 2006**2. In the Private Water Supplies (Scotland) Regulations 2006(b)—**

- (a) after regulation 3(2) insert—
 - “(3) These regulations do not apply to a Type A supply.”;
- (b) in regulation 7(4), for “(2)” substitute “(3)”;
- (c) in regulation 33(1), for sub-paragraph (b) substitute—
 - “(b) for—
 - (i) collecting water samples;
 - (ii) the analysis of water samples;
 - (iii) carrying out a risk assessment under regulation 27(2); and
 - (iv) reviewing any such risk assessment.”;
- (d) in regulation 29(3), for “7(5)” substitute “7(4)”;
- (e) omit—
 - (i) regulation 6;
 - (ii) regulation 7(1)(a), (2), (4)(b) and (5);
 - (iii) regulations 8 to 26;
 - (iv) in regulation 31(2)(a), “or (5)”;
 - (v) regulation 32(b);
 - (vi) regulation 33(1)(a);
 - (vii) in regulation 33(2), “25 or”;
 - (viii) in regulation 33(3), “22(6)(a) or”;
 - (ix) regulation 34(1)(a)(i) and (ii), (g) and (l);
 - (x) regulation 36;
 - (xi) schedule 2;
 - (xii) schedule 2A;
 - (xiii) schedule 3;

(a) 1980 c.45; sections 76E and 76L were inserted by section 168 of, and Schedule 22 to, the Water Act 1989 (c.15); sections 76FA and 76FB were inserted by S.S.I. 2010/95.

(b) S.S.I. 2006/2009, as amended by S.S.I. 2010/95, S.S.I. 2014/364 and S.S.I. 2015/346.

- (xiv) in schedule 4, in paragraph (1), “16 and”; and
- (xv) schedule 5A.

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

3. In the Private Water Supplies (Grants) (Scotland) Regulations 2006(a)—

- (a) in relation 2(1)—
 - (i) after the definition of “the 2006 Regulations” insert—
““the 2017 Regulations” means the Private Water Supplies (Scotland) Regulations 2017;” and
 - (ii) after the definition of “estimated expenditure” insert—
““private water supply” includes a supply of water in pipes within the meaning of the 2017 Regulations;”;
- (b) in regulation 3(1), after “(2)” insert “or (3)”;
- (c) after regulation (2) insert—
“(3) Subject to regulation 10(a) and (b), an eligible person is a person who—
 - (a) is—
 - (i) a relevant person within the meaning of the 2017 Regulations; or
 - (ii) a person who owns or occupies premises in Scotland in respect of which a private water supply system is the sole or main supply of water intended for human consumption (within the meaning of the 2017 Regulations) to those premises; and
 - (b) provides or receives a private water supply which is the subject of—
 - (i) a derogation granted under schedule 6 of the 2017 Regulations;
 - (ii) a risk assessment (within the meaning of the 2017 Regulations);
 - (iii) a notice given under section 25 of the 2017 Regulations; or
 - (iv) a notice served under section 76G of the 1980 Act.”;
- (d) in regulation 4(3), after “3(2)(b)” insert “or 3(3)(b)”;
- (e) in regulation 5, after “2006 Regulations” insert “or the 2017 Regulations”; and
- (f) in regulation 9(4)(a), after “Part VI or Part VIII of the 2006 Regulations” insert “or, as the case may be, Part 3 of the 2017 Regulations”.

(a) S.S.I. 2006/210, as amended by S.S.I. 2014/364.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations aim to protect human health from the adverse effects of any contamination of water intended for human consumption by ensuring that the water meets water quality standards.

These Regulations replace existing provision pursuant to the further implementation of—

- Council Directive 98/83/EC on the quality of water intended for human consumption^(a), except in so far as it applies in relation to water supplied by Scottish Water or water offered for sale in bottles or containers, and
- Council Directive 2013/51/EURATOM laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption^(b), except in so far as it applies in relation to water supplied by Scottish Water or water offered for sale in bottles or containers.

Except where the contrary intention appears, in so far as a thing done (such as a sample taken or a failure investigated) or having effect as if so done under a provision of the 2006 Regulations could have been done under the re-enacted provision (modified or not), that thing has effect as if done under that re-enacted provision^(c).

Part 1 makes general provision for citation, commencement, extent, application, interpretation, etc.

Part 2 makes provision in relation to a register of supply systems, etc.

Part 3 makes provision in relation to the risk assessment of water supplies.

Part 4 makes provision in relation to water quality standards and duties.

Part 5 makes provision in relation to monitoring and analysis.

Part 6 makes provision in relation to investigation and remedial action.

Part 7 makes provision in relation to information and reporting.

Part 8 makes provision in relation to enforcement powers.

Part 9 makes provision in relation to offences.

Part 10 makes changes to other enactments.

^(a) OJ L 330, 5.12.98, p.32, as amended by Corrigendum (OJ L 111, 20.4.2001, p.31), Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p.1), Regulation (EC) No 596/2009 (OJ L 188, 18.7.2009, p.14) and Commission Directive (EU) 2015/1787 (OJ L 260, 7.10.2015, p.6).

^(b) OJ L 296, 7.11.2013, p.12.

^(c) This transitional provision applies by virtue of section 17(2)(b) of the Interpretation Act 1978 (c.30).

Annex D

Partial Business and Regulatory Impact Assessment

Title of Proposal

The Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017 (“the draft Regulations”)

Purpose and intended effect

- **Background**

The Private Water Supplies (Scotland) Regulations 2006 (“the existing Regulations”) implement the Directive 98/83/EC (“Drinking Water Directive”) in so far as it applies to large private water supplies (referred to as ‘Type A supplies’) and small private water supplies (referred to as ‘Type B supplies’).

Some changes were made to the Drinking Water Directive by Directive (EU) 2015/1787. These changes need to be implemented by 27 October 2017.

- **Objective**

To implement afresh, for large private water supplies, the Drinking Water Directive and Directive 2013/51/Euratom by replacing the existing Regulations (in so far as they apply to those supplies), with the draft Regulations. The provisions of the draft Regulations are therefore intended to implement:

- Directive 98/83/EC on the quality of water intended for human consumption (“the Drinking Water Directive”),
- Directive (EU) 2015/1787 amending Annexes II and III to the Drinking Water Directive (“the Amending Directive”), and
- Directive 2013/51/Euratom laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption (“the Euratom Directive”).

It is proposed that, for small private water supplies, a separate set of Regulations will update, and possibly replace, the existing Regulations .

The Amending Directive revises and replaces Annexes II and III to the Drinking Water Directive, which lay down the minimum requirements of the monitoring programmes for all water intended for human consumption and the specifications for analysis of different parameters. The specifications in the annexes require to be updated in the light of scientific and technical progress and to be consistent with other EU legislation. The Amending Directive is required to be transposed into domestic legislation by 27 October 2017.

Annex II has been amended to align to the latest updates to the World Health Organisation's water safety plan approach based on risk assessment and risk management principles laid down in the WHO Guidelines for Drinking Water Quality. Experience has shown that, for many (particularly physico-chemical) parameters in drinking water, the concentrations present would rarely result in any breach of limit values. Monitoring and reporting such parameters without practical relevance imply significant costs, especially where a large number of parameters need to be considered. Introducing flexible monitoring frequencies under such circumstances presents potential cost-saving opportunities that would not damage public health or other benefits. Flexible monitoring also reduces the collection of data that provide little or no information on the quality of the drinking water. The amendments to Annex II allow Member States to derogate from the monitoring programmes they have established, provided credible risk assessments are performed, which may be based on the WHO Guidelines and should take into account the monitoring carried out under Article 8 of Directive 2000/60/EC ("the Water Framework Directive").

Annex III has been amended to allow laboratories to use the most up-to-date European or equivalent international standards for the analysis of parameters and for the methods of analysis to be validated in accordance with the most recent standards.

- **Rationale for Government intervention**

The latest amendments require to be transposed into domestic legislation by 27 October 2017. Private drinking water supplies impact on a number of policy areas, such as health, tourism and the rural economy. These regulations contribute to the Healthier strategic objective, as well as the National Outcome that we live longer, healthier lives.

Consultation

- **Within Government**

We have discussed the proposals with colleagues in Defra (Drinking Water Inspectorate) and DAERA (NI).

- **Public Consultation**

We trailed an outline of the proposals at a workshop for local authority environmental health officers in May 2016, sought and discussed suggestions for the regulations at a meeting of the EHOs' Private Water Supplies Sub-group in July 2016 and discussed a draft of the proposed regulations at a further meeting with the Sub-group on 10 April 2017. We have also discussed the proposals with Citizens Advice Scotland. A public consultation on the proposals will run for 12 weeks from 6 May to 28 July 2017.

- **Business**

We will ensure that a number of business representative groups who may have an interest in the proposals are sent a link to the consultation. These will include

Scottish Land and Estates
National Farmers' Union of Scotland
Scottish Independent Hostels
Association of Scottish Self Caterers
British Holiday and Home Parks Association
Scottish Association of Landlords

We will also encourage local authorities to send the consultation to up to 10 businesses listed on their register of private water supplies.

Options

Option 1 – Do nothing

This option runs the risk of infraction proceedings or a fine by the EU as the Amending Directive will not be transposed.

Option 2 – Transpose Amending Directive by amending existing Regulations

The existing Regulations have been amended a number of times and contain a complex mix of EU and domestic requirements made under different powers.

Option 3 – Transpose Amending Directive by replacing the existing Regulations (so far as they apply to large private water supplies) with a fresh set of Regulations

This provides an opportunity to replace the existing Regulations with provisions that are easier to follow and which include additional powers and tools to make it easier for local authorities to ensure that the water quality standards are achieved.

Option 4 – Implement Amending Directive by non-regulatory means e.g. guidance for local authorities

This would not be sufficient to transpose the provisions of the Directives into UK law.

Sectors and groups affected

Owners, other relevant persons and users of large private water supplies (i.e. those supplies that provide 10m³ of water a day or more or serve 50 or more persons) and those in relation to water supplied as part of a commercial or public activity. There are estimated to be 2,400 private water supplies which will be subject to these regulations, many of these providing water to visitors to Scotland using hotels, caravans and holiday lets.

Benefits

There would be no identifiable benefits associated with option 1 and option 2 would

leave some issues of compliance with the public health provisions of the current regulations unaddressed. Option 3 provides the opportunity to make improvements in the quality of private water supplies through the use of a more robust risk assessment and additional enforcement provisions which will benefit all users including visitors to Scotland.

Costs

Risk assessment

There are additional costs to local authorities under option 3 in terms of phasing in a mandatory risk assessment which is approved by the competent authority for all private water supplies subject to these regulations but as under the existing regulations there are provisions for local authorities to recover the cost of collecting undertaking risk assessments from the owner or user of the supply. All private supplies which are subject to these regulations currently have a risk assessment, but this does not meet the requirements set out in the Amending Directive. To mitigate the impact on local authority resources and on owners and users we are proposing to phase this requirement in over a period of 4 years. We have also relaxed the frequency of risk assessment review from annually to every five years. Current annual overall cost to all owners and users is estimated to be £120,000 for risk assessment review, though the amount recovered by local authorities does not fully cover their costs as the current regulations place a cap on the amount which can be recharged and this has not been reviewed for 11 years. Over the 4 year phasing-in period the additional costs are estimated to be £94,000, an additional annual cost of £23,500. The draft regulations require a risk assessment and then a review after 5 years, therefore when compared against the requirements for current supplies of a review every year, it is likely that the cost for each risk assessment for each supply over ten years will be reduced.

Sampling

There are also some additional costs associated with options 2 and 3 in terms of meeting the evidence base requirements of the revised monitoring programmes introduced by the Amending Directive. There is a requirement for three year's sample results before a parameter can be removed through use of risk assessment from the monitoring programme. The current regulations have allowed individual parameters to be removed from monitoring programmes, though the criteria differ significantly from the Amending Directive. This means that the evidence base is may not currently be met, though data from the public supplies monitoring programme and any environmental monitoring programmes will be reviewed. It is therefore possible that additional monitoring will be necessary. To mitigate this and the substantial costs that would be incurred by monitoring each supply over 3 years we propose to monitor by supply zones which will be groups of private water supplies. The current annual cost of analysis is estimated to be £232,700. It is anticipated that the annual monitoring costs, will be in the range of £276,000 - £456,000. It is not possible to be more exact until the findings of the research programme into water supply zone designations is complete and the number of zones known,.

Scottish Firms Impact Test

As stated above, we will ensure that a number of specific business interests are made aware of the consultation.

Competition Assessment

Using the Competition and Markets Authority Competition Filter Questions we have concluded that the proposals will neither directly or indirectly limit the number or range of suppliers, limit the ability of suppliers to compete, or reduce suppliers' incentives to compete vigorously. The proposals include provisions aiming to increase the information available to consumers.

Test run of business forms

The regulations are enforced by local authorities and contain provisions relating to a number of new types of notice and a register of private water supply systems. The regulations specify what these should contain, but do not include templates for forms.

Legal Aid Impact Test

The proposals include rights of appeal against notices served under the new regulations and there may therefore be impacts on the legal aid fund.

Enforcement, sanctions and monitoring

The regulations are enforced by local authorities with oversight provided by the Drinking Water Quality Regulator for Scotland (DWQRS). They contain a number of enforcement provisions including remediation, enforcement and emergency notices and penalties for offences. Water quality monitoring programmes are a key component of the regulations as are requirements for regular reporting on water quality.

Implementation and delivery plan

The regulations will be subject to a 12 week public consultation before making and laying the regulations in September 2017 with a coming into force date of 27 October 2017 to meet the EU transposition deadline. The regulations contain provision for regular reporting by local authorities and the DWQR on drinking water quality.

- **Post-implementation review**

The regulations will be reviewed in the light of any further changes to the Drinking Water Directive, on which proposals are likely to be produced before the end of 2017, or otherwise within 10 years.

Summary and recommendation

Option 3 is being recommended as there could be sanctions if we fail to transpose the Amending Directive and it is helpful to make use of the opportunity to replace the existing Regulations in relation large private water supplies with a fresh set of Regulations which are easier to follow and confer additional enforcement tools to strengthen the public health protection provided by the regulations.

- **Summary costs and benefits table**

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	None	Infraction proceedings or fine
2	Full transposition of EU law	Some additional cost in meeting the evidence base requirements of revised monitoring programmes
3	Full transposition of EU law and improved public health protection	Additional cost in meeting the evidence base requirements as for option 2, additional costs to local authorities and owners and users with mandatory risk assessment for all private water supplies subject to the regulations

Declaration and publication

- Sign-off for Partial BRIAs:

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date: 25 April 2017

**Roseanna Cunningham MSP
Cabinet Secretary for the Environment, Climate Change and Land Reform**

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