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Llywodraeth Cymru  
Welsh Government

Welsh Government  
Consultation – summary of response

## Review of the Private Water Supplies (Wales) Regulations 2010

September 2017

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.

## **Introduction**

The “Review of Private Water Supplies (Wales) Regulations 2010” consultation was launched on the 11 April 2017 and was open for responses until 12 July 2017. The consultation was split into 4 parts, dealing with mandatory European Drinking Water Directive requirements, amendments to clarify certain sections of the Regulations, amendments to the fees schedule and future policy direction for private water supplies and the Regulations.

A total of 15 questions were set within the consultation and an online response form was also provided for ease of email return.

Below is a summary of responses, organised into responses for the different parts of the consultation:

Part 1: Transposition of the Drinking Water Directive

Part 2: additional amendments

Part 3: potential changes to the Regulations (Fees Schedule)

Part 4: Future changes to Regulations and additional issues raised during pre consultation discussions (future policy on private water supplies).

## **Responses**

In total 24 responses were received for this consultation. The responses were received by a combination of email responses and online consultation response form submissions. The responses represented organisational groups as follows:

- Public sector bodies and group responses (not including specific local authority responses) 6
- Local authority responses 6
- Private individual responses 7
- Agricultural union responses 1
- Private representative organisation responses 2
- Public health group responses 1
- Charity responses 1

## Part 1: Transposition of the Drinking Water Directive

In October 2015 the European Commission brought into force updates to Annexes II and III of the Drinking Water Directive, with a requirement for member states to transpose the amendments by 27 October 2017.

Part one of the consultation detailed the amendments to the Regulations required to ensure that the Regulations reflect updates in the Drinking Water Directive.

### **Question 1: are there any aspects of the new requirements that you require further clarity?**

This question was intended to capture only comments in relation to the new requirements of the Drinking Water Directive detailed in section 1.

There were 13 responses to this question.

A number of respondents (7) used this section to call for further clarity in relation to exemptions in Regulation 3 and the definition of tenancies in Regulation 10 (8 respondents).

These responses will be considered under the relevant consultation questions, further on in the summary of responses.

One respondent seeks further clarification in relation to accreditation required for sampling, transport and analysis of drinking water within the scope of the Regulations.

The Welsh Government considered this issue and following further engagement with the local authorities. The Welsh Government will commission a training session for the local authorities, to share the Drinking Water Inspectorate's (DWI) Guidance documents and best practice in relation to Risk Assessments, sampling and Analysis within the scope of the Regulations.

Two respondents called for further clarification regarding how the fees are applied to supply owners in different circumstances.

The Welsh Government will continue to work with the DWI and local authorities to ensure that there is comprehensive guidance in the application of fees and that local authorities publish the fees breakdown.

## Part 2: additional amendments

### **Question 2: do you have any comments in relation to widening the existing exemption in Regulation 3 for crop washing so that it covers water used in any food production process, so long as the wholesomeness of the foodstuff is not affected.**

There were 13 responses to this question.

Seven of the responses noted that Regulation 3 seems to overlap food production legislation, expressing concern that if not worded carefully this regulation may undermine or conflict food legislation.

Six of the respondents were in support of the widening of the exemption of Regulation 3, three of those in support further caveated this on the proviso that it did not compromise existing food legislation and that the Food Standard Agency (FSA) was satisfied with any proposed exemptions.

The FSA's response was in support of this regulation as long as any changes do not compromise the requirements of Regulation 852/2004 (specifically Annex I Part A (II) and Annex II Chapter II, III and VII).

Several respondents from local authorities also expressed a desire to see more input from the FSA where LA's were trying to determine issues around this Regulation as well as clarification on how a decision is made and who makes the decision on this exemption.

Respondents from local authorities also felt it would be beneficial to have their officers trained and accredited in Hazard and Critical Control Point (HACCP).

The Welsh Government will ensure that the wording around regulation 3 is not ambiguous or in conflict with the regulation 852/2004.

The Welsh Government will work with the DWI to ensure that the DWI's guidance to local authorities gives a clear decision making process for this regulation.

The Welsh Government would also encourage local authorities to ensure that the officers with responsibility for private water supplies are HACCP trained.

**Q3. Do you have any comment on the types of tenancies that we plan to exclude through the Drinking water Inspectorates guidance?**

There were 14 responses to this question.

Seven of the respondents (mainly local authorities) suggested clarifying the criteria for a tenancy within the Regulations as "whether rent is paid". Six respondents suggested cross referencing the tenancy definition with relevant housing legislation in Wales.

Seven responses (from a combination of LA's, health bodies and CLA and FUW) noted that there should not be any exclusions if the regulations were there to protect public health and all tenancies should be offered an equal measure of protection from the Regulations. Two responses (one local authority and one personal response) were supportive of the exclusions proposed in the consultation. One response felt that landlords and businesses should be excluded from the Regulations if they had their own risk assessment/monitoring and sampling process in place.

A number of responses also suggested that closer working between local authority officers carrying out duties in relation to private water supplies and officers dealing with housing inspections would be beneficial.

The Welsh Government will look to align the definition of tenancy with that given in Welsh housing legislation and will ask the DWI to provide further direction within their guidance for clarity.

**Q4: do you have any comments in relation to the requirement to undertake a risk assessment for new supplies?**

There were 16 responses to this question.

Six respondents saw the advantages of using this regulation to ensure that commercial/regulation 9 supplies are assessed before use.

A number of respondents cautioned this approach on single domestic dwellings, commenting that it was not clear if they were included in this regulation.

A number of respondents were keen to see if something could be added to the planning application process to identify and flag where there was an intention to use a private supply, in order to allow the relevant local authority officers to assess this information in a timely manner.

Six respondents felt that if the supplies were in relation to food then they needed to follow HACCP principles and receive validation before coming into use (or following a period of non use).

Three responses were completely against a risk assessment being carried out prior to a new supply being brought in, as they felt that those bringing in new supplies already follow good practice in respect of design, infrastructure and building, and that this requirement would duplicate work already carried out by a supply owner.

The Welsh Government notes this comment but also notes that in the DWI's annual reports, the water quality failure rate of private water supplies is consistently considerably higher than for mains provided supplies, with 5.2% of private water supplies failing to meet national standards. In 2016 187 private water supplies in Wales were recorded as a potential danger to human health, with local authorities serving Regulation 18 notices on the supplies, of these failures 70% of them were large supplies or supplies to commercial or public premises. This seems to indicate that a number of private water supplies are not following good practice in relation to design, construction and management.

A number of respondents were concerned that local authorities may not have the resource to carry out this regulation in a timely manner, and called for the Welsh Government or DWI to produce a code of practice to establish prioritisation regarding risk assessment and sampling of private water supplies.

Concerns were also expressed that the lack of legal obligation on the supply owner to declare their supplies makes the task more challenging for local authorities.

The Welsh Government will ensure that the wording of the regulation and guidance makes it clear that this regulation is in relation to regulations 8, 9 and 10 supplies. The Welsh Government will discuss with the Drinking Water Inspectorate whether their guidance can provide some direction to local authorities in relation to prioritisation.

### **Part 3: potential changes to the Regulations (Fees Schedule)**

#### **Q5: Do you have any comment in relation to the proposed amendments to the fees schedule?**

There were 17 responses to this question.

Two respondents were content with the proposed new fees table. Eight respondents noted that the increase in fees was justifiable but questioned whether the increase would cover costs in all cases. The eight respondents also called for a fees toolkit as used in similarly regulated areas such as food.

Four respondents felt that the proposed amendments were not acceptable. The main comment for these concerns was that the fees impose a cost on supply owners who do not have an option to move to a mains supply and have no other method of maintaining their supply other than through compulsory legislation. Respondents felt there should be a way of risk assessing and monitoring their own supplies and self declaring to local authorities.

The Country Land and Business Association stated that every effort should be made to keep costs as low as possible whilst it is mandatory to carry out this work.

#### **Q6: do you feel that an upper limit for fees should be removed instead of fees amendments?**

There were 16 responses to this question.

Of the 16 responses only one respondent was in favour of removing the upper limit on the fees on the understanding that the fees should be self limiting.

Respondents believe that a cap on the fees should remain in place for the following reasons:

- It gives a cost certainty to those requiring risk assessment and monitoring.
- The cap allows the local authority and supply owner to build an element of trust in the regulatory relationship, which may be lost if supply owners are suspicious over the costs being charged in an individual authority.
- Concern that if the cap was removed the fees could become unregulated and unlimited and fees may be used to generate income rather than recover costs.

Seven respondents agreed with the cap, but expressed a desire to see an element of flexibility around 'unforeseen circumstances' such as certain parameters costing more to test.

Two responses were completely against the principles of fees in the first place cap or no cap.

### **Q7: Do you envision any issues with this as a potential approach?**

There were 15 responses to this question.

Eight responses highlighted concern that removing a cap or non specific wording on this regulation would allow local authorities to use this regulation as a tool to raise income for the local authority.

Seven respondents noted that there are already existing challenges regarding non payment.

Two respondents noted that there would be a higher risk of owners not declaring their supplies if they saw the fees as unreasonable, and also noting that charging fees is counter productive to ensuring self declaration of supplies.

Two responses were concerned that this could lead to inconsistency of what is seen as a 'realistic cost' by different local authorities, and that LA's may apply an over cautious approach resulting in additional costs. There was also concern that the interpretation of 'reasonable' could lead to legal challenges if supply owners did not agree with a local authority's interpretation.

Concern was also raised the more remote supplies may suffer from higher costs with vulnerable rural communities facing higher costs for service provision needs out side of their control.

Following the consultation responses the Welsh Government will implement the proposed fees table rather than removing the cap. The Welsh Government will ask the DWI to provide detailed guidance on how the fees are to be applied and to investigate whether a fees toolkit can be developed for the local authorities to use.

The Welsh Government reminds the local authorities that they have a duty to publish their fees so that supply owners can see what their individual local authority charges.

The Welsh Government will also investigate options available to offset some of the costs in relation to fees. However the Welsh Government also notes that private water supply owners using their water for commercial purposes have the economic advantage of not paying water bills.

### **Part 4: Future changes to Regulations and additional issues raised during pre consultation discussions (future policy on private water supplies).**

#### **Q8: do you have any comments in relation to the possibility of exploring options around identifying and recording all private water supply sources in Wales?**

There were 18 responses to this question.

Seven respondents were completely supportive of the idea of exploring options to identify all private water supplies, noting that it would have public health benefits and assist local authorities in identification and notification of supplies at risk following pollution or contamination events. Four respondents noted that greater knowledge of private water

supplies in Wales would assist in further understanding issues around water sufficiency and abstraction.

Six respondents were supportive of the idea but questioned whether local authorities currently have the resource or ability to manage private water supplies already identified.

Four respondents were against any further work in identification of private water supplies due to concerns regarding the cost and resource of implementing anything with no defined benefit.

A number of respondents suggested looking in to placing a requirement in planning applications to declare how water will be supplied to a development as one method of increasing the data held on private water supplies and also to see if there was a method of declaring supplies when ownership of property changes.

**Q9: do you consider it appropriate to look at a requirement to register all Private Water Supplies in Wales either within this legislation or through new legislation if required.**

There were 18 responses to this question: 10 in favour, 5 not in favour and 3 neutral responses.

Reasons given for the positive responses include:

- Identifying previously unknown private water supplies (especially commercial ones)
- Improving public health and allowing the FSA and LA's to look at planning inspection programmes accordingly
- Ability to identify supplies at risk from pollution or contamination
- Ability to understand all water abstraction in a water resource zone.

Reasons given for the negative responses include:

- Unnecessary bureaucracy and cost
- LA's already holding registers for the supplies they check
- Not seeing the tangible link between a register and resolving problems with supplies as they happen any more effectively

Respondents noted that there would potentially be a heavy reliance in information being provided by users and that any approach would require further resourcing and enforcement to ensure that information was up to date and accurate.

Four respondents also noted that if a requirement was placed on borehole drillers to register all boreholes with the local authority it would be easier to keep a register accurate.

**Q10a: Do you have any thoughts in relation to the possibility of developing a Wales wide data base to hold information of Private water supplies?**

**10b: if a database holding information on all private water supplies in Wales was developed who do you feel would be best placed to hold over all ownership of it?**

There were 19 responses to question 10a, 14 positive and 5 negative.

Supportive respondents saw possible advantages including:

- A streamlining of data and formats between the local authorities
- Access to cross boundary risk assessments

- Identification of at risk groups from pollution or sufficiency issues and implications of abstraction
- Ability to identify unknown commercial premises on a private water supply
- A Wales wide data base would breakdown the LA based boundaries which do not apply to changes in environmental factors) i.e. land use, geology...) – helping to improve the understanding between water quality, water security and water health.
- Assist in future land use policy and planning
- Potential to reduce the burden of responding to FOI and EIW requests and allowing wider access to information for relevant stakeholders

The respondents who opposed the idea of a database expressed concerns in relation to bureaucracy, costs and how the information would be used.

For question 10b the dominant response was for a lead local authority to be resourced to develop and hold a Wales wide data base. Some respondents suggested an approach similar to that of Rent Smart.

Other responses included a suggestion the Natural Resource Wales (NRW) hold the information due to overlap with abstraction information and septic tank information held by NRW.

Two responses felt this should sit with the DWI as it is felt that they are the relevant regulator for drinking water.

Three responses felt that the data base should be developed in partnership allowing certain organisations such as NRW and the food regulators relevant access to the information.

**Q11: do you have any comments regarding proposals to look at a separate piece of legislation placing a requirement on commercial and new suppliers using register treatment installers and borehole drillers.**

There were 20 responses to this question: 12 positive, 3 negative and 5 neutral responses.

Some of the responses highlighted confusion in understanding existing legislation and regulation in place in relation to boreholes.

17 respondents could see possible advantages with a legislative approach but expected certain caveats to be considered in the process including:

- A quality assurance scheme for installers and drillers (like the WRAS plumbing scheme) to ensure that the borehole/ instillation of the supply was of an acceptable quality).
- If this could be linked into the planning process, to ensure that supplies are quality assured in good time before being brought into use.
- On the proviso that existing guidance and good practice is updated and existing legislation on this enforced more due to examples of poor installations.

2 respondents were not aware of any evidence to support a legislative requirement on registration of boreholes and called for more evidence to be collected in order to understand the issue before potentially adding something which could prove to be costly to those requiring boreholes for new supplies.

Those against any further legislation expressed strong concerns that the cost would fall to the supply owners, who in many cases have no other option other than to be on a private water supply.

The Welsh Government has noted the responses to questions 8 through to 11 and will take these responses into consideration before taking any steps to address these issues.

**Q12: we should be grateful for any general comments you wish to make on the proposals for the draft private water supplies (Wales) regulations 2017.**

There were 15 additional comments in relation to the Regulations.

Six respondents have asked for further guidance to be provided in relation to regulation 11 and monitoring for radioactive substances.

A number of respondents noted that they would like to see a consistent approach carried out by all local authorities in Wales. They noted that fees and certain regulations are approached differently by each local authority.

Three responses note that exempting single domestic dwellings still raises discussion and trying to explain the logic of this exclusion to the public can be difficult. One response noted that the majority of people using a private supply in Wales would be from a single domestic dwelling, so the regulations do not adequately protect the bulk of people potentially at risk from a private water supply.

A number of responses from personal respondents indicated hostility to the Regulations and the Government's intervention into private water supplies, expressing concerns over the escalating costs of supplies complying with the Regulations.

Some respondents suggested looking at more voluntary approaches or allowing the supply owners to demonstrate their supplies are wholesome to the local authorities

**Q13: We would like to know you're views on the effects that the Private Water Supply Regs would have on the Welsh language, specifically on:**

- i) Opportunities for people to use Welsh and**
- ii) Treating the Welsh language no less favourably than English.**

**What effects do you think there would be? How could the positive effects be increased, or negative effects be migrated?**

**Q14: please also explain how you believe the proposed regulations could be formulated or changed so as to have:**

- i) Positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.**
- ii) No adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.**

There were 6 responses to questions 13 and 14 which respondents linked together in their responses.

Three respondents noted that private water supplies tend to have a rural nature, potentially meaning a higher number of Welsh speakers would be impacted by the Regulations.

Respondents noted the importance of the regulations, guidance, reports and any further public discussion material regarding private water supplies being provided in both English and Welsh.

One respondent noted the importance of local authority officers dealing with private water supplies being able to communicate in Welsh.

The Welsh Government produces these regulations in both English and Welsh.

The Welsh Government will ensure that when there is public engagement in relation to developing further policy and regulations which will impact private water supplies opportunities are given for consideration in both English and Welsh.

**Q15: We have asked a number of specific questions. If you have any related issues which have not specifically been addressed please use this space to report them**

There were 4 responses to this question.

One respondent would like to see more done in terms of how private water supply owners can be encouraged to plan for supply interruptions and managing them, including clear information and processes on who to contact to ask for help from.

One response wanted correspondence from local authorities to be standardised and clear, as they had noted that a number of supply owners had received correspondence which seemed to give misleading information in relation to single domestic supplies.

The issue of grants being made available to assist supply owners in upgrading their private water supplies was raised by one respondent.

2 respondents requested further clarification around the wording of specific regulations.

The Welsh Government also noted a number of responses questioning the need to amend Regulations which relate to a European Directive, following the referendum to leave Europe.

The Welsh Government is committed to maintaining a high standard of drinking water quality in Wales and has committed within the Water Strategy for Wales to ensure everyone in Wales has access to clean, wholesome drinking water. The Drinking Water Directive itself is based on recommendations made by the World Health Organisation in relation to drinking water quality. The Drinking Water Directive aligns with the Welsh Government's policy.

The UK will remain part of the European Union until it formally exits the Union in 2019, and as such remains legally bound to comply with all relevant European legislation until the exit process has been completed.

## **Next steps**

The Welsh Government must make the relevant changes in the regulations in relation to the Drinking Water Directive's annexes by October 2017.

The Welsh Government will take responses into consideration, while finalising the wording of the draft regulations to ensure that points of clarity are cleared up.

The Welsh Government will work with the DWI and local authorities to ensure that guidance provided to the local authorities in carrying out their duties is clear and unambiguous.

The Welsh Government will arrange a training session for the local authorities regarding best practice for risk assessments, sampling and monitoring of private water supplies.

The Welsh Government will investigate whether there is a funding stream that can be utilised to assist in improving the quality of private water supplies.

### **Additional considerations for Welsh Government as a result of the Consultation**

The consultation raised a number of points regarding escalating costs for both the local authorities and supply owners. We will investigate whether there are alternative options available in the longer term to ensure that drinking water quality improves for those who are currently on private water supplies, without continually increasing the financial burden on those who do not have any alternative options in relation to their supply of drinking water.

We will look at ways of encouraging local authorities to share best practice and knowledge with each other (and between internal departments), and look to see if there are ways of providing tools that streamline the delivery of the regulations to ensure greater consistency between local authorities.

## **Full list of respondents**

### **Public sector bodies and group responses**

- British Geological Survey
- Food Standards Agency Wales
- Natural Resources Wales
- Public Health Wales
- Wales Food Safety Expert Panel
- Wales Heads of Environmental Health Group

### **Local Authority Responses**

- Caerphilly Council
- Denbighshire Council
- Monmouth Council
- Pembrokeshire Council
- Powys Council
- Rhondda Cynnon Taf Council

### **Private Individual responses**

- 7 respondents all who specified a desire to remain anonymous

### **Agricultural union responses**

- Farmers Union Wales

### **Private Representative Organisation responses**

- Central Association of Agricultural Valuers
- Country Land and Business Association (CLA)

### **Public health group (not public sector) responses**

- Water Health Partnership

### **Charity responses**

- Llanthony Valley and District Show Society