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Llywodraeth Cymru
Welsh Government

Welsh Government Consultation Document

Review of the Private Water Supplies (Wales) Regulations 2010

Date of issue: 11 April 2017

Action required: Responses by 12 July 2017

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

Overview

The Private Water Supplies (Wales) Regulations 2010 implement Council Directive 98/83/EC on the quality of water intended for human consumption in relation to private water supplies. A private supply is defined in section 93 (1) of the Water Industry Act 1991 as a supply that is provided otherwise than by a water undertaker or water supply licensee(s).

This consultation seeks your views on proposed changes to the Private Water Supplies (Wales) Regulations 2010 to implement the amended European Directive 2015/1787 (The Drinking Water Directive) and to ensure they are fit for purpose to allow local authorities to carry out their duties. Insert text to explain how to respond to the consultation e.g. using the questionnaire at the back of the document, attending an event, completing an online form.

How to respond

Please submit your responses by the 12 July 2017, in either of the following ways:

By email
water@wales.gsi.gov.uk

By post
Water Branch
Energy, Water and Flood Division
Welsh Government
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

When responding please state whether you are responding as an individual or are representing the views of an organisation.

If responding on behalf of a larger organisation, please make clear who the organisation represents and, if applicable, how the views of members was collected.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Contact details

For further information:

Water Branch
Energy, Water and Flood Division
Welsh Government
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ
email: water@wales.gsi.gov.uk
telephone: 029 2082 6391

Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Introduction

The Private Water Supply Regulations were first introduced in 1991 to provide a legislative framework for the quality of water intended for human consumption that is not supplied by water companies or water supply licensee(s). The rural nature of much of Wales means that many people rely on their own, private, water supplies. The 1991 Regulations were revoked and replaced by the Private Water Supply (Wales) Regulations 2010 (“the 2010 Regulations”), which transposed the requirements of Council Directive 98/83/EC on the quality of water intended for human consumption (known as the Drinking Water Directive).

It is estimated that over 87,000 people in Wales live or work in a premises supplied by a private water supply. In certain local authorities in Wales more than 10 per cent of the population may be using a private water supply rather than a mains supply.

This consultation concerns proposed amendments to the 2010 Regulations, primarily to transpose new requirements of the Drinking Water Directive.

We are also taking the opportunity to clarify certain aspects of the 2010 Regulations.

We are proposing to consolidate the 2010 Regulations into new regulations, rather than amending regulations being issued.

The Private Water Supply (Wales) Regulations apply in Wales only. The draft regulations in this consultation will apply in Wales only. Separate regulations are made in Scotland, England and Northern Ireland.

The draft regulations are included as an Annex to be read along side this document.

We would like to hear from anyone with an interest in the quality of private drinking water supplies including but not limited to local authorities and operators of private water supplies.

This consultation document is divided into sections covering the proposals bulleted below. Questions are included throughout the document and are then summarised again at the end of the document.

- Monitoring requirement and applications of new risk assessment requirements
- Additional amendments
 - to improve clarity
 - New requirements
- Fees
- Possible future changes

The response to these questions will assist in the final drafting of the regulations in Wales and will enable the Welsh Government to consider possible future improvements in the management of private drinking water supplies.

Part 1: Transposition of Drinking Water Directive:

The draft regulations introduce new requirements for local authorities to monitor and carry out risk assessments.

The amendments provide an opportunity to monitor drinking water parameters at more appropriate frequencies. The new Annex II provides an option to perform the drinking water monitoring in around 100,000 water supply zones in Europe in a more flexible way, provided a risk assessment is performed ensuring full protection of public health. It follows the principle of 'hazard analysis and critical control point' (HACCP) used already in food legislation, and the water safety plan approach laid down in the World Health Organisation Guidelines for Drinking Water Quality.

These amendments will allow a better and more problem-oriented monitoring of all private water supplies. The amendments put in place criteria to ensure a consistent approach, to reduce unnecessary analyses and to concentrate on those controls that matter.

Annexes II and III to the Drinking Water Directive lay down the minimum requirements of the monitoring programmes for all water intended for human consumption and the specifications for the method of analysis of different parameters.

Annex II to the Drinking Water Directive grants a certain degree of flexibility in performing the audit monitoring (group B parameters) and check monitoring (group A parameters), allowing for less frequent sampling under certain circumstances. The specific conditions to perform the monitoring of parameters at appropriate frequencies and the range of monitoring techniques need to be clarified in the light of scientific progress.

Since 2004, the World Health Organisation has developed the water safety plan approach which is based on risk assessment and risk management principles, laid down in its Guidelines for Drinking Water Quality¹. Those Guidelines, together with standard EN 15975-2 concerning security of drinking water supply, are internationally recognised principles on which the production, distribution, monitoring and analysis of parameters in drinking water is based. Annex II of the Drinking Water Directive is therefore aligned to the latest updates of those principles, and our regulations will also need to reflect this alignment.

The relevant requirements in the draft regulations are set out below:

Regulation 6: Will require a local authority to carry out a risk assessment which meets EN15975 concerning guidelines for risk management around security of a drinking water supply. The Drinking Water Inspectorate's risk assessment tool will meet the above criteria.

Regulation 11: sets out the sampling and analysis requirements for a local authority. The amendments to the directive now require copper, lead and nickel samples to be taken as an unflushed sample.

Schedule 2: The tables detailing the monitoring requirements for local authorities have been updated to meet the new requirements of Annex II of The Drinking Water Directive. The schedule also details the requirements for varying a sampling frequency or parameter on a private supply.

¹ http://www.who.int/water_sanitation_health/publications/2011/dwq_guidelines/en/

Schedule 4: sets out the amended requirements of Annex III of the Drinking Water Directive in relation to sampling and analysis. Amendments include a provision on the requirement for a sample to be analysed and recorded using a system satisfying the requirements of EN/ISO/IEC 17023.

Requirements for methods of analysing odour and taste parameters.

Requirements for methods of analysing microbiological parameters.

Q1. Are there any aspects of the new requirements that you require further clarity?

Part 2: Additional amendments

We would also like to take this opportunity to provide greater clarity around the wording within the regulations. The main proposed changes are as follows:

Reg 3

In the 2010 Regulations, there is a specific exemption for crop washing where water does not affect the fitness for human consumption of the crop or of any food or drink derived from the crop (Reg 3 (c) of the 2010 Regulations).

In Reg 3 of the draft regs, we propose to widen this exemption so that private supplies of water used in any food production will be excluded from the scope of the regulations where the competent authority² is satisfied that the water can not affect wholesomeness of foodstuff in its finished form.

Q2: Do you have any comments in relation to widening the existing exemption in Reg 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?

Regulation 6: currently has a requirement to carry out a risk assessment within 5 years of the regulations coming into force and subsequently every 5 years. The wording will be updated as the coming into force date has now passed.

There will also be a requirement for the local authority to provide a summary of the results of that assessment within 12 months to Welsh Ministers.

Regulation 6 also references commercial supplies; this wording will be amended to match the wording in the Drinking Water Directive.

Regulation 8 & 9: the wording will be amended as in Reg 6 to be consistent with the wording in the Drinking Water Directive.

For Regulation 9 water supplies that are considered to be in scope include: hotels and B&Bs, holiday lets and caravan sites. Domestic tenancies will be included in an amendment to Regulation 10.

Regulation 10: as in regs 6 to 9 the wording will be amended to be consistent with the wording in the Drinking Water Directive.

² The Food Standards Agency

Regulation 10 will also have a new requirement to carry out risk assessments on properties with a domestic tenancy. This allows properties being used for letting purposes to be assessed in line with the codes and practices in place through Welsh housing legislation. The Drinking Water Inspectorate will then provide guidance on which supplies this covers for example agricultural tenancies and properties provided as part of a job will be excluded.

Regulation 18: Procedure following investigation. The regulations have been reworded to clarify what action should be taken if the cause of a water supply becoming unwholesome is due to the distribution system within a domestic premises and the action if the cause is due to the distribution system within a public building.

For domestic premises, the local authority can only inform occupants of the problem and offer advice. However, they can not compel replacement or other actions of internal pipes.

For public building, the local authority must ensure appropriate remedial action is taken, as well as informing occupants and providing advice.

The wording in the 2010 Regulations has caused confusion and need greater clarity. The wording has therefore been changed from 'pipework in a single dwelling' to 'distribution within a domestic premises' to avoid confusion with other aspects of the regulations where reference is made to 'single domestic dwelling'.

Q3: Do you have any comments on the types of tenancies that we plan to exclude through the Drinking Water Inspectorate's guidance?

New Requirements

In addition to the changes set out above, we are proposing to include new requirements in the regulations as follows:

New Reg 15: New Supplies

The new regulation requires local authorities to carry out a risk assessment and monitor any new private water supply or any supply not being used for a period of 12 months, of which it becomes aware, as soon as is reasonably practicable. Such a supply must not be brought into use until the local authority is satisfied what it does not constitute risk to health.

We note that some supplies may be brought into use without the Local Authorities knowledge. Local Authorities already have the power to serve a regulation 18 notice prohibiting supply and to issue improvement notices, which we would expect the LA's to use.

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

Part 3: Potential changes to Regulations

Schedule 6: Fees

The sustainability of the fees schedule has been raised a number of times in recent reviews, with local authorities expressing concerns the fees do not sufficiently cover the work they are required to do. Following on from these concerns the Drinking Water Inspectorate has carried out some research for consideration by policy officials in revising the regulations.

In adjusting the fees schedule we are mindful of the costs of these regulations to owners of private water supplies which are principally in rural areas, against the need for local authorities to be able to cover the costs of carrying out their required duties.

Fees schedule as it currently stands:

Service		Fee
Risk Assessment (each Assessment)		£500
Sampling (each visit)		£100
Investigation (each investigation)		£100
Granting an authorisation (each authorisation)		£100
Analysing a sample		
	Taken under Reg 10	£25
	Taken during check monitoring	£100
	Taken during audit monitoring	£500

In 2016 The Drinking Water Directorate carried out an evidence gathering exercise followed by research regarding the Fees structure for Private Water supplies. Following on from email surveys, liaison with labs and a dialogue app consultation the following structure to amend the fees schedule is proposed:

Proposed amendments to Fees Schedule

Service		Fee
Risk Assessment (each Assessment)		
	Reg 10 maximum	£300
	Reg 9 maximum	£700
Sampling (each visit)		£100
Investigation (each investigation)		£250
Granting an authorisation (each authorisation)		£100
Analysing a sample		
	Taken under Reg 10	£25
	Taken during check monitoring	£110
	Taken during audit monitoring	£600

The risk assessment costs will cover review, travel time and costs to and from site. Maximum costs for Regulations 9 and 10 have been separately set following comments on the complexity of Regulation 9 supplies.

Sampling is based on the estimate of 2-3 hours of an officer's time.

The previous £100 fee for investigations was deemed as insufficient to carry out an investigation as it only covered 2-3 hours of an officer's time, the proposal is to increase to reflect the additional time required for an investigation.

Taken Under Reg 10 has been kept the same and will be unlikely to be used going forward. Reg 10 sample analysis covers the maximum charge for the statutory suite of 5 parameters and not additional parameters identified during the risk assessment.

Check monitoring has been increased to reflect the general 8% increase of laboratory costs since 2010.

The increased cost here should cover most circumstances including sampling accreditation over 3 years, inflation and radio active substances where risk is identified.

Q5: Do you have any comments in relation to the proposed amendments to the Fees Schedule?

Another option raised is to remove the upper limit.

The Local Authorities are bound to recover “reasonable costs incurred”. The removal of upper limit future proofs increased costs and allows proper focus on more detailed site visits with realistic cost recovery.

Q6: Do you feel that the upper limit for fees should be removed instead of Fees amendments?

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

Part 4: future changes to Regulations and comments on additional issues raised during pre consultation discussions.

It is estimated that over 87,000 people in Wales live or work in a premises supplied by a private water supply. In certain local authorities in Wales more than 10 per cent of the population may be using a private water supply rather than a mains supply.

There has been considerable concern raised over the years regarding the high level of single domestic supplies in Wales and the lack of knowledge of these supplies. Unlike mains supplies there is no guarantee that the water being used in a private water supply is wholesome or that it will remain sufficient to meet the users needs in the future.

Although LA's do not have to risk assess or monitor single domestic dwellings on a Private Water Supply, they do have to keep a record of their location. Some authorities have expressed a concern regarding difficulties obtaining this information. The lack of knowledge around location of supplies and number of properties reliant on a private water supply leads to a number of policy issues and concerns for the Welsh Government which include:

- Quality of supplies in use – the data that the Drinking Water Inspectorate has access to for Private water supplies in Wales shows a much higher rate of failure for quality indicators than that of mains connected water supplies. This means that it is possible that a number of people using private supplies in Wales do not have access to safe drinking water.
- Potential health impacts of a poorly kept supply – Unsafe drinking water causes a number of health complications for those using the supplies, this in turn can increase pressures on the health service having to deal with the health care costs associated with the consumption of poor quality water. Identification of supplies would allow authorities to correctly target users of private water supplies to educate and inform them of the various health risks of a poorly managed supply.

- Information regarding treatment of private water supplies – being able to target the relevant people with useful information on how to keep a private water supply wholesome. And suggested measures regarding how to safeguard a supply.
- Issues around the security of a private water supply. The onus is on a supply owner to ensure they have contingency plans in place should their supply fail. A drought, flood or a pollution event could take out a supply for a period of time or indefinitely, which could be an unforeseen cost to a supply owner. The climate change risk assessment 2017 has identified the potential for water supply interruptions as a risk to consider. Understanding in more detail the scale of these risks would allow the Government to consider whether further resilience plans including possible Government intervention may be required.
- Contamination events – in the event of a pollution incident it can be difficult for local authorities to identify those people (on a private water supply, where there is not record of the supply) who may be at risk from drinking contaminated water, and may have to wait until supply users contact them about taste or odour. This can mean that the full scale of a pollution incident is not always clearly understood due to lack of data.
- Planning pressures on existing supplies – as single domestic supplies are not generally risk assessed by the local authorities, the authorities will not always be aware of the number of users a particular supply source may have. Although LA's are obliged to keep records of supplies, their records are only as good as the information proactively provided to them. This may cause problems in the long term with these sources then being committed in planning applications based on rough usage estimates which underestimate the actual burden on the supply causing it to dry up.

The Welsh Government is aware that a number of countries in Europe have databases where Private Water Supplies can be registered. These databases then help with the identification of strategic priorities for private water supplies, by linking water quality with outbreaks of diseases associated with contaminated supplies.

The Welsh Government is considering options around establishing a registration scheme similar to the septic tank registration scheme and database to record all private water supplies in Wales in order to assist policy development in the issues identified above.

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?

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?

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?

Q10b: If a data base holding information on all private water supplies in Wales was developed who do you feel would be best placed to hold overall ownership of it?

In addition to the lack of information held on private water supplies in Wales there have also been concerns raised regarding the drilling of boreholes for new supplies. Where boreholes are drilled for water supply, they often become a private water supply.

Drillers are already required to inform British Geological Survey (BGS) when the borehole is greater than 15 metres for water supply.

The Welsh Government is considering whether notification about borehole drilling should also be required to be provided to local authorities by drillers and / or their customers. And whether there should be a minimum depth.

Notification of boreholes may help to identify potential supplies before they come into use, allowing risk assessments to be carried out in a timely manner. The benefit would be to achieve necessary partnership working between the local authority and the customer when there is a new borehole which becomes a new private water supply.

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 registered treatment installers and borehole drillers.

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?

Consultation Response Form

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

Q1. Are there any aspects of the new requirements that you require further clarity?

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

Q5: Do you have any comments in relation to the proposed amendments to the Fees Schedule?

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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?

Q 13: We would like to know your views on the effects that the Private Water Supply (Wales) Regulations would have on the Welsh language, specifically on

- i) opportunities for people to use Welsh and
- ii) on treating the Welsh language no less favourably than English.

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

Question 14: 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, and
- 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.

Question 15: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Please enter here:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: