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Pamela Taylor  
Chief Executive

Sent by email to  
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Dear Tracy

**Water UK response to Consultation on The Private Water Supplies (England) Regulations 2008**

Water UK welcomes the opportunity to respond to Defra's proposals for the Private Water Supplies (England) Regulations.

Water UK represents water and wastewater service providers at UK and European level. Our members provide safe clean drinking water and contribute to protection and enhancement of public health and the environment. We support the principles of sustainability, sound science, better, streamlined and efficient regulation to ensure better outcomes for consumers and the environment.

Although private supplies are, by definition, not the responsibility of the statutory water suppliers, there are potential implications for statutory suppliers from some of the draft proposals set out in the consultaion..

In addition to this response, we encourage Defra to consider all responses received from water companies.

Our responses to the specific questions raised are as follows:

## Specific questions

**1. Bearing in mind the obligation to implement the Directive fully, do you agree that the proposed Regulations should apply to “private distribution systems”?**

**In particular –**

- (a) should a water supply that is made to premises by means of a private distribution system be treated as if it was a private supply in some or all cases, and**
- (b) should monitoring be restricted to specified parameters or be determined by risk assessment?**

**Response.** “Private distribution systems” provide the final link between the water undertaker’s distribution system and the consumer. The condition and maintenance of these private systems can result in deterioration in water quality such that supplies do not meet national or European standards. Inclusion of private distribution systems with the scope of the proposed Regulations would help ensure that all consumers receive a safe and wholesome supply of drinking water.

In principal the “private distribution systems” described in the consultation paper are identical to distribution systems owned and operated by licensed water suppliers. These distribution systems are subject to the same monitoring and quality requirements as systems operated by water undertakers. This being the case it could be argued that the owners/operators of “private distribution systems” should have to meet the same financial, operational and quality requirements of licensed water suppliers. Whilst this would create a number of practical and legal difficulties failure to do so would result in inconsistent application of the European Drinking Water Directive.

Point (a). In order to implement the requirements of the Directive fully it would seem necessary to apply the proposed Regulations to all private distribution systems. If the consumers pay the owner of the system for the provision of a water supply the arrangement would be part of a commercial activity (Article 3 (2) (b) of the Directive). To be consistent with the proposals for other commercial supplies this would require the same monitoring as for other “large” private supplies.

Point (b). Given the similarity between “private distribution systems” and the systems operated by licensed water suppliers, there is a case for requiring an identical monitoring regime. This would involve the full range of audit and check monitoring parameters specified in the Directive. Risk assessments could be used to restrict the range of audit monitoring parameters but this option is not available for check monitoring parameters. Allowing a restricted monitoring programme for “private distribution systems” would lead to questions about the need to undertake more comprehensive monitoring for other types of supply.

In addition to the above we would like to point out a potential issue regarding the definition of “private distribution systems”. In the consultation document it is suggested that pipework within a block of flats is not a “private distribution system” because individual owners or occupiers will pay a bill to the water undertaker. Combined billing arrangements means that this is not necessarily the case. In the draft regulations it is proposed that premises that are not included within the monitoring programmes of water undertakers define private distribution systems. In practice this may not be a workable definition and samples will sometimes be taken from premises served via a private distribution system (e.g. trading estates, mobile home parks etc ). The ownership of the local distribution system may not be evident unless there is an investigation following a failure or complaint. A better definition would be in terms of water distribution systems/assets that are not owned by the local water undertaker.

**2. Should small domestic supplies of less than 10 m<sup>3</sup>/day (except supplies to single private dwellings) be included fully in the proposed Regulations and therefore required to comply with the proposed regulatory standards and other requirements (options 2(a) and 3(a) in the Impact Assessment)?**

**Response.** Including all private supplies within the scope of the proposed Regulations would ensure that all consumers receive the same level of protection. However, it is likely that many small water supplies will not comply with the required standards for all parameters. Where the parameter is not directly related to health e.g. pesticides, iron, or colour the costs of ensuring compliance may be disproportionate.

**3. Do you agree that single private dwellings be subject to the provisions for monitoring and improvement -**

- (a) with a duty to carry out a risk assessment or monitoring if an owner or occupier requests the authority to do so? and**  
**(b) with improvement powers applied at the discretion of the local authority?**

**Response.** The proposals for single private dwellings creates, in effect, a two tier system for ensuring the quality of private supplies. Given the large number of very small supplies this may be a pragmatic and proportionate approach but it is widely recognised that a significant number of private supplies will fail to meet the standards set out in the Directive, at least occasionally. This would result in a failure to ensure that all consumers receive the same degree of health protection. One way to address this issue would be to encourage local authorities to sample all private supplies within 5 years of implementing the Regulations.

**4. Do you agree with Defra's policy of giving consumers of private supplies the same degree of health protection as consumers of public supplies by including national requirements (standards) in the Regulations as part of the definition of wholesomeness?**

**Response.** We agree with the principle of giving consumers of private supplies the same degree of health protection as consumers of public supplies but we believe that several of the parameters that fall within the scope of "national requirements" have parametric limits that are more stringent than is needed to protect health. The standards for iron, colour, manganese, odour and taste are all based on aesthetic considerations. For these parameters some discretion may be appropriate to avoid excessive costs.

The proposed limit for nitrite, 0.1mg/l, is consistent with the limit for public supplies at the outlet of water treatment works but this limit is intended as a guide to the adequacy of disinfection/chlorination processes. Given that many private supplies will not be subject to disinfection, or will only be treated using UV disinfection systems, the 0.1mg/l is inappropriate. For public water supplies the standard for turbidity that applies at customers' taps is 0.5mg/l. This would be the appropriate limit to apply to private water supplies.

**5. Do you agree that for new installations for the preparation and distribution of private supplies, the suppliers shall be required to use only substances and products that the Secretary of State has approved under the 2000 Regulations for the purposes of public water supplies?**

**Response.** We support this proposal and consider it to be particularly important for “private distribution systems”. In order to minimise the risks of contamination after water has left a water undertakers distribution system advice should also be given on the types of materials that should be used when pipes and fittings are to be laid in ground that is contaminated or corrosive.

**6. Do you agree that local authorities should carry out risk assessments of private supplies to assist them in carrying out their duties under the proposed Regulations, particularly in respect of monitoring and remedial action (options 3(a) and 3(b) in the Impact Assessment)?**

**Response.** Risk assessments of private supplies will be helpful in understanding the potential risks to water quality, will help target the monitoring programme and, if necessary, will guide remedial actions. However, we are concerned that a robust risk assessment may require specialist expertise that is not readily available to local authorities. In these circumstances the local authority will require specialist support. Although there is nothing in the proposed Regulations to prevent this activity being contracted out the maximum fees that the local authority can charge, £100 per assessment, will limit the amount of external support that a local authority could afford.

**7. Do you agree with the minimum check monitoring frequency for relevant supplies?**

**Response.** The proposed frequencies appear to satisfy the requirements of the Directive and would be adequate for a stable and consistent groundwater source. If the source were subject to seasonal variation, however, the proposed frequencies would be inadequate. A risk assessment will help identify these sources but it is not clear whether a local authority will be able to insist upon or charge for more frequent monitoring. Sampling during periods of increased risk e.g. after heavy rainfall, might mitigate against the risk of concluding that a supply is safe and wholesome.

It is not clear if water sources used for putting water into bottles or containers falls within the scope of the proposed Regulations. If this is the intention there needs to be an enhanced monitoring programme in order to satisfy the requirements of the Directive (Annex II, table B2). Note: The present UK regulations for bottled water do not specify any sampling frequencies.

**8. Do you agree -**

- (a) with the minimum audit frequencies for relevant supplies, and**
- (b) that local authorities should take into account the findings of risk assessments when deciding whether to exclude parameters from audit monitoring?**

**Response.** The proposed frequencies appear to satisfy the requirements of the Directive and would be adequate for a stable and consistent groundwater source. If the source were subject to seasonal variation, however, the proposed frequencies would be inadequate. A risk assessment will help identify these sources but it is not clear whether a local authority will be able to insist upon or charge for more frequent monitoring. Sampling during periods of increased risk e.g. after heavy rainfall, might mitigate against the risk of concluding that a supply is safe and wholesome.

Excluding parameters on the basis of a risk assessment is a pragmatic and efficient interpretation of what is required by the Directive. This approach would avoid unnecessary and expensive monitoring and in principle this approach could be applied to public water supplies where there is good evidence that many parameters are unlikely to exceed standards.

It is not clear if water sources used for putting water into bottles or containers falls within the scope of the proposed Regulations. If this is the intention there needs to be an enhanced monitoring programme in order to satisfy the requirements of the Directive (Annex II, table B2). Note: The present UK regulations for bottled water do not specify any sampling frequencies.

**9. Do you agree that small domestic supplies of less than 10 m<sup>3</sup>/day should be monitored as proposed:**

- (a) domestic supplies to more than one dwelling but less than 10 m<sup>3</sup>/day once per year minimum;**
- (b) discretion to monitor single private dwellings with duty to monitor on request?**

**Response.** The distinction between supplies serving single dwellings and more than one dwelling is somewhat artificial and may not reflect differences in risks to health e.g. a single property with several small children compared with two

properties with single adults. In practice the local authority may be able to use information about the type of consumers in deciding whether to carry out additional monitoring but the inability to charge for discretionary monitoring may act as a barrier. Excluding supplies to single dwellings from the compulsory monitoring requirements is not consistent with the suggestion that small domestic supplies are particularly vulnerable to contamination or the intention to achieve a consistent policy for all private supplies. Unless some monitoring is carried out it is not possible to confirm whether a supply complies with the quality requirements of the proposed regulations and is safe to drink.

**10. Are the requirements for the information that local authorities should include in their record of private supplies satisfactory?**

**In particular -**

**(a) is the correct information specified; and**

**(b) are the times within which the records should be completed, and the periods for retention appropriate?**

**Response.** The information to be recorded is appropriate but the need to retain water quality results for 30 years for “epidemiological purposes” appears excessive, particularly for small supplies, including those to single dwellings. Unless there is a reasonable amount of data for a range of water quality parameters (unlikely for small supplies) it most unlikely that the data will be of value for epidemiological research. There will be costs associated with maintaining and transferring information to new data systems over such a long period. The decision to retain data beyond 5 years could be left to the discretion of the local authority.

It is noted that the draft Regulations mention retaining “other information” for 10 years, whereas the consultation document refers to 5 years.

**11. Do you agree with –**

**(a) the framework for investigating a failure, remedial action, serving and enforcing improvement notices, and restriction notices;**

**(b) the policy to negotiate with owners in an attempt to solve problems informally, and only where this does not work that they should grant authorisations, or serve improvement notices or restriction notices, as appropriate?**

**Response.** In general we support the proposed framework. In many cases it should be possible to solve problems by negotiation with the owners. Where this is not possible it will be necessary to utilise the new powers that are proposed.

There are two areas where the draft Regulations may require attention.

- i) The consultation document refers to buildings supplying water to the public and the absolute requirement to take action if failures are due to the domestic distribution system. The draft Regulations do not define the scope of these public buildings and do not specify any additional requirements in terms of investigation or compliance.
- ii) In some cases a supply may fail to meet the required standards because of circumstances within the catchment of the water source e.g. the use of pesticides or nitrate. It is not clear if the powers given under Regulations 20-31 would extend to these matters. In some cases the person responsible for the management or control of the private supply may also be responsible for the activities within the catchment.

**12. Do you agree that it is unnecessary for local authorities to have specific powers to grant authorisations for less than 30 days for trivial failures of chemical parameter values?**

**Response.** The requirements in the Directive relating to short term, trivial exceedances are widely regarded as being bureaucratic and unnecessary. It is not necessary to give local authorities specific powers to deal with circumstances that can be dealt with by other means.

**13. Does the proposed new scheme of offences, and appeals by persons who are aggrieved by improvement notices or restriction notices, protect owners and users of private supplies from possible unreasonable actions by local authorities?**

**In particular, do you agree that -**

**(a) there should be a new offence to fail to comply with an improvement notice, or to breach or fail to comply with a restriction notice; and**

**(b) a person aggrieved by an improvement notice or a restriction notice should be able to appeal to the magistrates' court against the notice?**

**Response.** The proposed arrangements are broadly reasonable and the introduction of new offences will assist local authorities in reaching a negotiated solutions. The arrangements regarding appeals may be problematic. If a local authority defines a failure as a potential risk to human health the improvement notice (and subsequent offences) still stand. Where there is a clear and acute risk to health this is appropriate but in some circumstances defining a potential risk to human health will be a matter of opinion that may require the decision of the courts (e.g. E.coli is only an indicator of the presence of pathogens it does not necessarily mean that pathogens are present).

**14. Are the proposed maximum fees that local authorities may charge appropriate?**

**In particular -**

- (a) are the prescribed fees for monitoring appropriate;**
- (b) is the list of other activities for which local authorities may charge fees satisfactory and are the prescribed amounts reasonable; and**
- (c) is the system of invoicing and apportionment of costs appropriate?**

**Response.** There schedule of fees has the potential to create a variety of anomalies and inequities.

- i) The fees for check and audit monitoring are a flat rate irrespective of the type or number of parameters that are monitored. Where a risk assessment has identified that monitoring for most of the parameters is unnecessary, the maximum fee would be excessive.
- ii) The proposed Regulation specifies maximum amounts for each activity but the local authority is given discretion to reduce the fee where this exceeds the cost of the service. This means that the owner of a private supply in one area might be charged considerably more than in another area.
- iii) If it is necessary to analyse for all the parameters listed in under audit monitoring it is likely that the total cost would be more than £435. This will particularly true if the supply is at risk from different types

- of pesticides or if regular assessments of total indicative dose (radioactivity) are required.
- iv) In some circumstances a risk assessment may identify the need to monitor for substances that goes beyond the standard list of check and audit monitoring parameters. As currently drafted the proposed Regulations do not appear to permit a charge for this additional analysis. The analysis of obscure or problematic chemicals can be very expensive.
  - v) The schedule of fees will need to be reviewed periodically to take account of changes in sampling and analytical costs. This should not be dependent upon the need to revise/update the Regulations.

**15. Are the proposed powers of entry sufficient to enable local authorities to fulfil all of their functions and discharge their duties under the proposed Regulations?**

**Response.** The proposed powers of entry are extensive and would appear more than adequate for the purpose of enforcing these Regulations. We would make two observations

- i) It appears that a local authority can delegate their authority to any person. This power needs to be used with discretion. For example it may not be appropriate to delegate this authority to personnel from a contract laboratory that are primarily concerned with collecting samples.
- ii) Under regulation 27 (h) the power to seize computers and associated equipment for the purpose of copying documents appears excessive as regulation 27(i) would seem to give the powers to access and copy documents without seizure. Regulation 27(h) should, at the least, refer to “relevant” documents.

**COMMENTS ON THE IMPACT ASSESSMENT**

**Private distribution systems**

The consultation document explains the proposal to include “private distribution systems within the scope of the Regulations. However there appears to be no information on the number of “private distribution systems”. Private distribution systems will exist within a wide range of establishments including military establishments, airports, mobile home and caravan parks, many shopping complexes and industrial estates. Although we do not have definitive data it seems likely that there will be several thousand within England alone.

Although many private distribution systems will be perfectly satisfactory we know from experience that some are old, poorly designed and maintained and can cause significant water quality problems. Taking remedial action at these sites could cost many thousands of pounds.

The impact assessment does not appear to take account of private distribution systems in determining the costs for monitoring, remedial actions and enforcement. This will mean that the costs (and perhaps the benefits) of the different options will have been underestimated.

### **Small supplies used for commercial activities**

It is assumed that there are approximately 1000 small private supplies in England that are used for commercial activities. Given that this will include bed and breakfast accommodation and holiday lets, many of which will be in remote locations this number may be too low. This could mean the costs of the different options have been underestimated.

### **Compliance with the required standards**

The number of large and small private supplies that require remedial actions appears to be based on the percentage of samples from private supplies that have failed microbiological and chemical samples. Experience suggests that the quality of small water supplies is very variable over time and failures will not recur in every sample. This means that the percentage of non-compliant supplies will be significantly greater than the number of non-compliant samples. This means that the costs for investigations, issuing of notices and taking remedial action will be significantly higher than has been calculated in the impact assessment.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'P Mills', with a long horizontal stroke underneath.

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