

Date: 14th July 2004

Venue: Committee Room 3, National Assembly for Wales

Title: The Water Act 2003 – subordinate legislation arising from Section 58 (water fluoridation)

Introduction

1. This paper updates the Health and Social Service Committee with progress on actions arising out of the Water Act 2003 in relation to water fluoridation. Committee members are invited to note the position.

Background

2. Section 58 of the Water Act 2003 inserts new provisions into the Water Industry Act 1991 enabling the Assembly in Wales and strategic health authorities in England to require water undertakers to fluoridate water supply for an area on terms to be agreed between them or in default of agreement on terms determined by the Secretary of State in England or the Assembly in Wales or by a third party appointed by them if they wish. Prior to requesting an undertaker to enter into fluoridation arrangements, the Assembly (and strategic health authorities in relation to proposals in England) are required to consult the undertaker and to conduct public consultation on the proposal for a fluoridation scheme. The Act requires regulations to be made governing the public consultation arrangements. Section 58 has not yet been commenced in England and Wales.

3. There are no current proposals for new fluoridation schemes in Wales.

Legislative Requirements

4. The following legislative steps will be required in relation to Section 58 of the Water Act 2003:

- The making of an order commencing Section 58 of the Water Act 2003 in Wales. The Assembly has the power to make this commencement order separately from the Secretary of State for Health.
- The making of regulations governing arrangements for public consultation on proposed fluoridation schemes in Wales. The Assembly has the power to make these regulations separately from the Secretary of State for Health.
- The making of England and Wales regulations governing arrangements for public consultation on proposed cross-border fluoridation schemes. These regulations must be made jointly with the Secretary of State for Health.

Progress to Date

5. Assembly officials are working closely with officials in Department of Health in relation to the legislative framework arising out of the Water Act 2003. The Department of Health is aiming to consult on draft regulations governing the public consultation arrangements to be followed by strategic health authorities later this month. However a final set of draft regulations is not yet available. The consultation would be followed by parliamentary consideration of the regulations in the autumn. The Department of Health have not yet reached a view on the timing of regulations governing cross-border consultations. It is possible that work will not begin on these until both the England-only and Wales-only consultation regulations have been made.

6. It will not be possible to make Assembly regulations governing public consultation arrangements in Wales to the same timetable as Department of Health. However we would like to keep up with the DoH timetable if possible. Insofar as possible, we will seek to:

- consult on draft regulations in either late July or (more likely) early September, with copies to HSS Committee members;
- report to HSS Committee on the results of the consultation and submit the draft regulations for scrutiny in the late autumn or (if the consultation begins in September) winter;
- complete the remaining Assembly subordinate legislation procedures in 2005;
- an order commencing Section 58 of the Water Act will need to be made before the consultation regulations are made.

Consultation Regulations

7. As noted above, there are no current proposals to introduce new fluoridation schemes in Wales. The consultation regulations will need to provide sufficient flexibility for the consultation arrangements to be suited to the scheme proposed, should plans for new schemes be developed. (For example consultation arrangements for a very small scheme would need to be different to those for a very large scheme.) We expect, therefore, to adopt a "framework" approach to the consultation regulations – the regulations would set out the framework and the minimum requirements but would not attempt to anticipate, or prescribe for, every possible set of circumstances.

Next Steps

8. Copies of the draft England-only consultation regulations will be sent to HSS Committee members when they become available. A bilingual set of draft Wales regulations will then be produced for consultation, and again copied to HSS members.

Conclusion

9. HSS Committee members are invited to note the latest position.

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