

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 1 – The Senedd

Meeting date: 11 June 2018

Meeting time: 14.30

For further information contact:

Gareth Williams

Committee Clerk

0300 200 6362

SeneddCLA@assembly.wales

1 Introduction, apologies, substitutions and declarations of interest

2 Evidence session: The Powers in the EU (Withdrawal) Bill to make subordinate legislation – operational matters

(Pages 1 – 17)

Julie James AM, Leader of the House and Chief Whip;

William Whitely, Welsh Government;

Owen Davies, Welsh Government

CLA(5)–16–18 – Paper 1 – Letter to the Leader of the House and Chief Whip, 25 May 2018

CLA(5)–16–18 – Paper 2 – Letter Professor Thomas Watkin

CLA(5)–16–18 – Paper 3 – Letter from the Secretary of State for Wales, 3 June 2018

CLA(5)–16–18 – Paper 4 – Letter from the Llywydd, 5 June 2018

CLA(5)–16–18 – Briefing

3 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

(Pages 18 – 19)

CLA(5)–16–18 – Paper 5 – Statutory Instruments with clear reports

Negative Resolution Instruments



3.1 SL(5)219 – The M4 Motorway (Eastbound and Westbound Exit Slip Roads at Junction 33 (Capel Llanilltern) Cardiff) (40 MPH Speed Limit) Regulations 2018

3.2 SL(5)224 – The Animal Gatherings (Fees) (Wales) Order 2018

4 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3

Composite Negative Resolution Instruments

4.1 SL(5)220 – The Sea Fishing (Miscellaneous Amendments) Regulations 2018

(Pages 20 – 32)

CLA(5)–16–18 – Paper 6 – Report

CLA(5)–16–18 – Paper 7 – Regulations

CLA(5)–16–18 – Paper 8 – Explanatory Memorandum

Negative Resolution Instruments

4.2 SL(5)221 – The Water Supply (Water Quality) Regulations 2018

(Pages 33 – 95)

CLA(5)–16–18 – Paper 9 – Report

CLA(5)–16–18 – Paper 10 – Regulations

CLA(5)–16–18 – Paper 11 – Explanatory Memorandum

Affirmative Resolution Instruments

4.3 SL(5)217 – The Environmental Protection (Microbeads) (Wales) Regulations 2018

(Pages 96 – 141)

CLA(5)–16–18 – Paper 12 – Report

CLA(5)–16–18 – Paper 13 – Regulations

CLA(5)–16–18 – Paper 14 – Explanatory Memorandum

5 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3 but have implications as a result of the UK exiting the EU

- 5.1 SL(5)222 – The Animal Health (Miscellaneous Fees) (Wales) Regulations 2018**
(Pages 142 – 143)

CLA(5)–16–18 – Paper 15 – Report

- 5.2 SL(5)223 – The Animal By-Products and Pet Passport (Fees) (Wales) Regulations 2018**
(Page 144)

CLA(5)–16–18 – Paper 16 – Report

6 Subordinate legislation subject to no procedure

- 6.1 SL(5)218 – The Pigs (Records, Identification and Movement) (Wales) (Amendment) Order 2018**
(Pages 145 – 149)

CLA(5)–16–18 – Paper 17 – Order

CLA(5)–16–18 – Paper 18 – Letter from the Cabinet Secretary for Energy, Planning and Rural Affairs

7 Papers to note

- 7.1 Correspondence relating to the EU (Withdrawal) Bill**
(Page 150)

CLA(5)–16–18 – Paper 19 – Letter from Mark Drakeford, 24 May 2018

- 7.2 UK governance post-Brexit – intergovernmental relations**
(Pages 151 – 153)

CLA(5)–16–18 – Paper 20 – Letter from Mark Drakeford, 4 June 2018

CLA(5)–16–18 – Paper 21 – Letter from the Chair to Mark Drakeford, 25 May 2018

- 7.3 Consideration of Subordinate Legislation other than Statutory Instruments**
(Pages 154 – 155)

CLA(5)–16–18 – Paper 22 – Letter from the Leader of the House and Chief Whip

8 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

9 Consideration of evidence: The Powers in the EU (Withdrawal) Bill to make subordinate legislation – operational matters

10 EU (Withdrawal) Bill: Updates

(Pages 156 – 164)

CLA(5)–16–18 – Paper 23 – EU (Withdrawal) Bill: Update

CLA(5)–16–18 – Paper 24 – Welsh Government commitments in relation to EU Withdrawal

Date of the next meeting

18 June 2018

Julie James AM
Leader of the House and Chief Whip

25 May 2018

Dear Julie

Scrutiny of regulations made under the European Union (Withdrawal) Bill – operational matters

You will be aware that the Constitutional and Legislative Affairs Committee has, for many months, played an active role in considering constitutional matters related to the United Kingdom's withdrawal from the EU and in scrutinising the European Union (Withdrawal) Bill ("the Bill").

In February, we published our report on the *Scrutiny of regulations made under the European Union (Withdrawal) Bill*. In that report, while making a number of recommendations regarding the sifting process that will apply to regulations made under the Bill, we also committed to returning to more operational matters that relate to the scrutiny of those regulations. On this point I extend my thanks to you for accepting our invitation to attend our meeting on 11 June so that we may further explore these operational matters.

We have kept a watching brief on developments in the House of Lords with regards to the Bill and are aware that a number of amendments were passed at Report Stage which have implications for the scrutiny arrangements at the National Assembly. The Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks, reached between the Welsh Government and UK Government on 24 April, also includes matters which warrant our consideration. In our report on the *Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No.2) on the European Union (Withdrawal) Bill*, we reiterated our commitment to give further detailed consideration to the most recent amendments to the



Bill and any corresponding operational implications for the scrutiny of regulations made under the Bill.

Following our discussions at our meeting on 21 May and ahead of your attendance at our meeting next month, I would like to draw your attention to the following issues which, at this present time, we believe will require consideration on 11 June:

- the current estimate of number and complexity of instruments required to correct deficiencies in EU-derived law;
- the need for a forward look / management plan;
- the sifting process for regulations made under clauses 9, 11, Schedule 2 and 4;
- the scrutiny of composite instruments;
- notification processes when UK Ministers make regulations under clause 22;
- consent process when UK Ministers make regulations under clause 15 (Retaining EU restrictions in devolution legislation etc.) and Schedule 3.

I hope this information is helpful and look forward to your appearance before the committee on 11 June.

I am copying this letter to the Llywydd, in her capacity as chair of the Business Committee.

Yours sincerely,



Mick Antoniw

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



**Mick Antoniw, AM,
Chair,
Constitutional and Legislative Affairs Committee,
National Assembly for Wales.**

21 May 2018

Dear Mick Antoniw,

**SCRUTINY OF REGULATIONS MADE UNDER THE EUROPEAN UNION
(WITHDRAWAL) BILL – OPERATIONAL MATTERS**

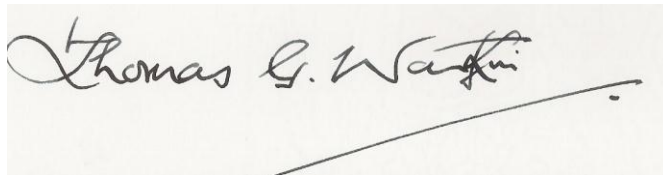
Thank you very much for your letter of 17 May inviting me to contribute to your consideration of the operational matters that relate to the scrutiny of regulations to be made under the provisions of the EU (Withdrawal) Bill, with particular reference to the amendments made by the House of Lords during the latest stages of the bill's passage.

As always, I shall be happy to contribute as best I can. On this occasion, there is however a difficulty in that I am committed to attending and contributing to some events over the next few weeks which will make it difficult for me to reply properly much before the middle of the week commencing 4 June. I realise that this is less than a week before your meeting with the Leader of the House, Julie James AM, and that ideally you would wish an earlier response. Nevertheless, I shall try to respond fully by that time if that is acceptable to you.

In case it may be of use in the meantime, there are some concerns with the proposals contained in the amendments which I think need to be addressed. I must emphasize that I have not as yet had the opportunity to study the Lords' amendments thoroughly and that what follows in the attached Appendix are first thoughts based on what I have managed to read thus far, and what I have heard and read discussed in the media. With that *caveat*, I hope the points raised will be of some use until I am able to submit a more reasoned reply.

With my thanks and best wishes,

Yours sincerely,

A handwritten signature in black ink on a light-colored background. The signature reads "Thomas G. Watkin" in a cursive script. Below the signature is a long, thin horizontal line.

Thomas Glyn Watkin

APPENDIX

1. I remain concerned that, in redistributing functions currently exercised by EU institutions, regulations made by Ministers of the Crown may allocate functions, relating to matters which are devolved, to public authorities which are not devolved Welsh authorities. If that is done, will the allocation remain valid when the five-year sunset period comes to an end? If it does, the Assembly will not be able to modify or remove such functions without Minister of the Crown consent, i.e., competence will in truth be lost. The same problem would arise if the allocation was to a UK government department, or if the function was made jointly exercisable by the Welsh Ministers and the Secretary of State.
2. When the sunset period has ended, will the Secretary of State's intervention powers remain in place regarding any changes which the Assembly is able to make within its competence to amend what the UK government has done by regulations in the meantime?
3. Is the Welsh Government putting in place mechanisms at Westminster to oppose the making of regulations to which the Assembly has not consented? Do they intend to mobilise a coalition of opposition parties to defeat such moves in the Commons given the UK Labour leader's comments on a continuing 'power grab'?
4. Where does the convention that the Lords do not frustrate the will of the democratically elected chamber rest where the Commons is overturning the will of a democratically elected devolved legislature on an issue which is devolved? There appears to be uncharted constitutional territory here. The matter would become particularly important if a UK general election returned a majority government before the two-year sunset period for making regulations had expired, thus making it unlikely that intervention in the Commons could succeed..
5. Is there a danger that the mechanism introduced to allow UK Ministers to ask Parliament to override the Assembly's wishes regarding legislative consent in this instance may form a precedent for how the Sewel Convention may be operated in the future? In other words, is the proposed procedure a Trojan horse? The answer to point 4 above becomes even more significant in that event.
6. Is, or should there be, a difference as a matter of convention between the consequences in Parliament or the Lords of the Assembly's not agreeing to consent and refusing consent?
7. Under the principles operating behind the 'English Votes for English Laws' procedures, should there be a similar procedure to allow Welsh MPs a distinct role in votes on regulations affecting laws which do not relate otherwise than in relation to Wales?

Thomas G. Watkin
21 May 2018

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

Ref: 52SOS 18

3 June 2018

Dear Mick,

Thank you for your letter of 11 May regarding the application of amendments to the European Union (Withdrawal) Bill ("the Bill") in relation to the sifting committee of the National Assembly for Wales.

You are right to point to the different arrangements in the Assembly as compared to Westminster. These differences mean that it is not appropriate to define the length of time committees in the Assembly are given to carry out a sift in the same terms as Parliamentary committees. Following consultation with the Welsh Government we determined that a 14-day period, discounting days on which the Assembly is dissolved or in recess for a period of more than four days, would be an appropriate time period to carry out a sift.

We have endeavoured to provide a broadly similar timescale for sifting to take place in the Assembly as in Parliament. I recognise your concerns however that in some circumstances the Assembly may have a shorter time in which to sift. It is of course open to the Assembly to modify the procedures set out in the Bill (following enactment) or extend the statutory time period for sifting.

With respect to Lord Lisvane's amendment to the Bill, the Government is giving careful consideration to its response to the amendment in light of the debate at the Bill's Lords Report stage. We will work with the Welsh Government and the Assembly Commission on any implications for Wales.

The new Devolution Guidance Note (DGN 18) *Parliamentary and Assembly Primary Legislation Affecting Wales* describes how officials should interact with the new reserved powers model, which came into force on 1 April. As such it has replaced DGNs 9 and 17 which describe the previous settlement. In preparing the new guidance my department worked extensively with officials across Whitehall and consulted officials in the Welsh Government and the Assembly Commission.

We recognise in the new guidance that there are some instances in parliamentary Acts relating to the UK's exit from the EU where Statutory Instruments in devolved areas made in Parliament do not require the Assembly's consent. However, the guidance makes clear that these are exceptions to the rule, and ordinarily the UK Government needs to seek Assembly consent for any SI it is bringing forward in a devolved area (through a Statutory Instrument Consent Motion (SICM)).

Finally, I can confirm that the UK Government intends to provide guidance to departments on the establishment of common frameworks and the Intergovernmental Agreement. The guidance will be published as soon as possible after the Bill gains Royal Assent. It will however be internal guidance for UK Government officials, and as such a public consultation on its content is not being undertaken.

I am copying this letter to Chloe Smith MP, Minister for the Constitution, Elin Jones AM, Presiding Officer to the National Assembly for Wales, the Rt Hon Carwyn Jones AM, First Minister, and Julie James AM, Leader of the House and Chief Whip.



Rt Hon Alun Cairns MP
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru



Elin Jones AC, Llywydd

Cynulliad Cenedlaethol Cymru

Elin Jones AM, Presiding Officer

National Assembly for Wales

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Your ref:
Our ref: EJ/CW

5 June 2018

Dear Mick

Further to the letter from the Secretary of State for Wales dated 3 June about the European Union (Withdrawal) Bill and related matters, I thought it would be helpful to clarify how the Assembly Commission has been and will be involved.

The Secretary of State reports that his department “consulted” officials in the Assembly Commission on the new Devolution Guidance Note 18. It should be noted that these discussions have been on an understanding that further revisions to DGN 18 would be required later this year to take account of EU withdrawal.

I authorise Assembly Commission officials to work on a confidential basis to advise stakeholders, including the Wales Office, on technical matters relating to the operation of the devolution settlement, in the spirit of offering expertise and assistance and achieving a shared understanding. This does not imply any political or indeed official endorsement of the DGN by the Assembly or any constituent part of it.

Yours sincerely

Elin Jones AM
Llywydd

Croesewir gohebiaeth yn Gymraeg neu Saesneg / We welcome correspondence in Welsh or English

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Agenda Item 3

Statutory Instruments with Clear Reports

11 June 2018

SL(5)219 – The M4 Motorway (Eastbound and Westbound Exit Slip Roads at Junction 33 (Capel Llanilltern), Cardiff) (40 MPH Speed Limit) Regulations 2018

Procedure: Negative

These Regulations impose a maximum speed limit of 40 miles per hour (instead of the general 70 miles per hour speed limit imposed on motorways by the Motorways Traffic (Speed Limit) Regulations 1974 (S.I. 1974/502)) on the lengths of the M4 motorway slip roads specified in the Schedule to these Regulations.

Parent Act: Road Traffic Regulation Act 1984

Date Made: 17 May 2018

Date Laid: 25 May 2018

Coming into force date: 18 June 2018

SL(5)224 – The Animal Gatherings (Fees) (Wales) Order 2018

Procedure: Negative

This Order set out fees payable to the Welsh Ministers in the field of animal health relating to the licensing of certain animal gatherings in Wales. The fees are set at 50% of the full cost of recovery of costs incurred by the Welsh Ministers from 30 June 2018 to 30 June 2019, and then set at 100% of the full cost recovery thereafter.

Parent Act: Animal Health Act 1981



Date Made: 22 May 2018

Date Laid: 30 May 2018

Coming into force date: 30 June 2018



Agenda Item 4.1

SL(5)220 – The Sea Fishing (Miscellaneous Amendments) Regulations 2018

Background and Purpose

These Regulations amend the Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009 and the Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014. They implement provisions of Article 38 of Council Regulation (EC) No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

Procedure

Negative, composite.

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(ix) – the instrument is not made in both English and Welsh

These Regulations have been made as a composite instrument, meaning that these Regulations have been: (a) made by both the Welsh Ministers and the Secretary of State, and (b) laid before both the National Assembly for Wales and the UK Parliament.

The Explanatory Memorandum to the Regulations states that, because of the composite nature of the Regulations, it was not considered reasonably practicable for the Regulations to be made in English and Welsh.

Merits Scrutiny

Three points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – the instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

EU law requires Member States to enforce certain prohibited sea fishing activities, such as importing fish caught by a fishing vessel of a non-cooperating third country. In March 2014, the Council of the European Union published, for the first time, a list of countries that have not cooperated with the EU in respect of illegal, unreported and unregulated sea fishing. The countries on the list are Belize, the Kingdom of Cambodia and the Republic of Guinea.

Those countries were specified as non-cooperating countries in March 2014. It is unclear why it has taken until May 2018 to make these Regulations to enforce prohibited activities against those non-cooperating countries.



2. Standing Order 21.3(ii) – the instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

The application of these Regulations relies on definitions such as “areas within the seaward limits of the territorial sea adjacent to England” and “part of the sea within British fishery limits which is to be treated as adjacent to Wales” etc.

To work out the precise meaning of these areas, it is necessary to look at many pieces of legislation and plot a large number of co-ordinates.

We recommend that, in future, simple maps be included in Explanatory Memoranda, to provide an at-a-glance summary of the relevant sea areas.

3. Standing Order 21.3(ii) – the instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

Some of the changes made by these Regulations arose out of technical reporting points raised by this Committee in January 2015. While we welcome those changes being made (in respect of Wales, England, Northern Ireland and, partly, Scotland), we note that it has taken almost three and a half years for the changes to be made.

Implications arising from exiting the European Union

These Regulations implement and enforce EU obligations in respect of sea fishing, and therefore these Regulations will form part of retained EU law after exit day.

The Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks states that “fisheries management and support” is a policy area likely to be subject to clause 15 regulations under the EU (Withdrawal) Bill. Therefore, the law covered by these Regulations is likely to be an area of EU law that is frozen while common frameworks are put in place.

Government Response

A government response is required to the merits scrutiny points raised in this report.

Legal Advisers

Constitutional and Legislative Affairs Committee

1 June 2018



STATUTORY INSTRUMENTS

2018 No. 643

SEA FISHERIES

**The Sea Fishing (Miscellaneous Amendments) Regulations
2018**

<i>Made</i>	- - - -	<i>22nd May 2018</i>
<i>Laid before Parliament</i>		<i>25th May 2018</i>
<i>Laid before the National Assembly for Wales</i>		<i>25th May 2018</i>
<i>Coming into force</i>	- -	<i>18th June 2018</i>

The Secretary of State, and the Welsh Ministers in relation to Wales, the Welsh zone and Welsh fishing boats beyond the seaward limits of the Welsh zone(a), make these Regulations in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(b), which are now vested in them(c).

-
- (a) The Welsh zone has the meaning given by section 158(1) of the Government of Wales Act 2006 (c. 32), as amended by section 43(1) and (2) of the Marine and Coastal Access Act 2009 (c. 23). The boundaries of the Welsh zone are specified in S.I. 2010/760. The boundary between the sea adjacent to Wales and that adjacent to England is described by article 6 of and Schedule 3 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). By virtue of section 162 of and paragraph 26 of Schedule 11 to the 2006 Act, S.I. 1999/672 continues to have effect. “Welsh fishing boats” has the meaning given in section 53(4) of the Wales Act 2017 (c. 4).
 - (b) 1981 c. 29 (“the 1981 Act”). See section 30(3) for the definition of “the Ministers” (as modified in relation to Scotland by section 30(5)).
 - (c) The function of the Ministers under section 30(2) of the 1981 Act in relation to Wales was transferred to the National Assembly for Wales and then transferred from that body to the Welsh Ministers: see article 2(a) of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32). The function was transferred to the Welsh Ministers by article 4(1) (e) of the Welsh Zone (Boundaries and Transfer of Functions) Order 2010 (S.I. 2010/760) insofar as it was exercisable in relation to the Welsh zone. The function was further transferred, on a concurrent basis, in relation to Welsh fishing boats beyond the seaward limit of the Welsh zone by section 59A of and paragraph 2(1) of Schedule 3A to the Government of Wales Act 2006. The function under section 30(2) of the 1981 Act exercisable in relation to British fishing boats (other than Scottish ones) within the Scottish zone, and Scottish fishing boats outside that zone but within British fishery limits, remains exercisable by the Ministers despite being transferred to the Scottish Ministers under section 53(1) of the Scotland Act 1998 (c. 46): see article 3(1) of, and Schedule 1 to, the Scotland Act 1998 (Concurrent Functions) Order 1999 (S.I. 1999/1592). The function under section 30(2) exercisable in relation to the Northern Ireland zone and Northern Ireland fishing boats outside that zone remains exercisable by the Ministers despite being transferred to the Department of Agriculture and Rural Development in Northern Ireland under article 3(2) of, and paragraph 3 of Schedule 2 to, the Sea Fisheries (Northern Ireland) Order 2002 (S.I. 2002/790): see paragraph 3(2) of Schedule 2 to that Order. Any remaining functions of the Secretaries of State concerned with sea fishing in Scotland and Wales under section 30(2) of the 1981 Act were transferred to the Minister of Agriculture, Fisheries and Food: see article 2(1) of the Transfer of Functions (Agriculture and Fisheries) Order 2000 (S.I. 2000/1812). The function of that Minister and the Secretary of State concerned with sea fishing in Northern Ireland acting jointly under section 30(2) was transferred to the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State concerned with sea fishing in Northern Ireland acting jointly: see article 2(5) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794). The function of the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State concerned with sea fishing in Northern Ireland was transferred to the Secretary of State by article 3(1)(d) of the Transfer of Functions (Sea Fisheries) Order 2012 (S.I. 2012/2747). Import and export control is a matter reserved to the United Kingdom Government under section 30 of and section C5 of Part 2 of Schedule 5 to the Scotland Act 1998 (c. 46) and under section 4(1) of and part 20 of Schedule 3 to the Northern Ireland Act 1998 (c. 47).

The Secretary of State, and the Welsh Ministers in relation to Wales and the Welsh zone, also make these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 (“the 1972 Act”)(a).

The Secretary of State and the Welsh Ministers are each designated for the purposes of section 2(2) of the 1972 Act in relation to the common agricultural policy of the European Union(b).

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Secretary of State and the Welsh Ministers that it is expedient for any reference in these Regulations to Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (c) to be construed as a reference to that Regulation as amended from time to time.

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Sea Fishing (Miscellaneous Amendments) Regulations 2018 and come into force on 18th June 2018.

(2) Subject to paragraphs (3) and (4), they extend to England and Wales only.

(3) The following regulations also extend to Scotland—

- (a) this regulation;
- (b) regulations 2 to 5, so far as they relate to article 9(6A)(e) and (12)(a) of the 2009 Order (as inserted by regulation 5); and
- (c) regulations 9 and 10, and regulation 8 so far as it relates to those regulations.

(4) The following regulations also extend to Northern Ireland—

- (a) this regulation;
- (b) regulations 2 to 5, so far as they relate to article 9(6A)(e) and (12)(b) of the 2009 Order (as inserted by regulation 5); and
- (c) regulations 8 to 11.

(5) In these Regulations, “the 2009 Order” means the Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009(d).

Amendment of the 2009 Order

2. The 2009 Order is amended in accordance with regulations 3 to 7.

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- (a) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and was amended by section 3(3) of and Part 1 of the Schedule to the European Union (Amendment) Act 2008, and S.I. 2007/1388. The function of the former Minister of Agriculture, Fisheries and Food of making regulations under section 2(2) was transferred to the Secretary of State by S.I. 2002/794. Under section 57(1) of the Scotland Act 1998 (c. 46), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under EU law in relation to devolved matters, the Secretary of State retains power to exercise such functions as regards Scotland. The Secretary of State’s power, as a Minister so designated, to make regulations which extend to Northern Ireland is confirmed by S.I. 2000/2812.
 - (b) The Secretary of State is designated in relation to the common agricultural policy by S.I. 1972/1811 and the Welsh Ministers by S.I. 2010/2690. The designation in relation to the common agricultural policy extends to the common fisheries policy: under Article 38(1) of the Treaty on the Functioning of the European Union, the EU’s common agricultural policy includes its common fisheries policy (OJ No. C 326, 26.10.2012, p. 62). Article 5(3)(a) of S.I. 2010/2690 provides that the designation of the Welsh Ministers for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy applies in relation to the Welsh zone.
 - (c) OJ No. L 343, 22.12.2009, p. 1, as last amended by Regulation (EU) No. 2015/812 of the European Parliament and of the Council (OJ No. L 133, 29.5.2015, p. 1).
 - (d) S.I. 2009/3391, to which there is an amendment not relevant to these Regulations.

Amendment of article 2

3. For article 2 (application) substitute—

“Extent and application

2.—(1) Subject to paragraphs (2) and (3), this Order extends to England and Wales only, except for the following provisions which also extend to Scotland and Northern Ireland—

(a) articles 1 to 3; and

(b) article 9(6A)(e).

(2) Article 9(12)(a) also extends to Scotland.

(3) Article 9(12)(b) also extends to Northern Ireland.

(4) Subject to paragraph (5), this Order applies—

(a) in England and Wales and the Welsh zone;

(b) in relation to English fishing boats and Welsh fishing boats, wherever they are; and

(c) in relation to other fishing boats which are within the Exclusive Economic Zone^(a) but not in—

(i) the Scottish zone; or

(ii) the Northern Ireland zone.

(5) Article 9(6A)(e) applies to offences committed—

(a) in England, in relation to English fishing boats;

(b) in Wales, in relation to Welsh fishing boats;

(c) in Scotland, in relation to Scottish fishing boats; and

(d) in Northern Ireland, in relation to Northern Ireland fishing boats.”.

Amendment of article 3

4. In article 3 (interpretation)—

(a) for the definition of “England” substitute—

““England” includes the area within the seaward limits of the territorial sea adjacent to England but does not include any area in the Welsh zone, the Scottish zone or the Northern Ireland zone;”;

(b) after the definition of “England” insert—

““English fishing boat” means a fishing boat which is—

(a) registered at a port in England, under section 8 of the Merchant Shipping Act 1995^(b); or

(b) owned wholly by persons qualified to own British ships for the purposes of Part 2 of the Merchant Shipping Act 1995, other than a Welsh fishing boat, a Northern Ireland fishing boat or a Scottish fishing boat;”;

(c) after the definition of “local authority” insert—

““Northern Ireland” has the meaning given in section 98(1) of the Northern Ireland Act 1998^(c);

“Northern Ireland fishing boat” means a fishing boat which is registered at a port in Northern Ireland, under section 8 of the Merchant Shipping Act 1995;

(a) The Exclusive Economic Zone was designated in S.I. 2013/3161.

(b) 1995 c. 21.

(c) 1998 c. 47.

“Northern Ireland zone” has the meaning given in section 98(1) of the Northern Ireland Act 1998;”;

(d) after the definition of “port health authority” insert—

““Scotland” has the meaning given in section 126(1) of the Scotland Act 1998(a);

“Scottish fishing boat” means a fishing boat which is registered at a port in Scotland, under section 8 of the Merchant Shipping Act 1995;

“Scottish zone” has the meaning given in section 126(1) of the Scotland Act 1998;”;

and

(e) after the definition of “Wales” insert—

““Welsh fishing boat” means a fishing boat which is registered at a port in Wales, under section 8 of the Merchant Shipping Act 1995;

“Welsh zone” has the meaning given in section 158(1) of the Government of Wales Act 2006(b)”.

Amendment of article 9

5.—(1) Article 9 (offences) is amended as follows.

(2) For paragraph (4) substitute—

“(4) It is an offence for a person to engage in fishing for a stock in any area where, under the conservation and management measures (within the meaning of the Council Regulation) applicable in that area, such fishing is subject to a moratorium or is prohibited.”.

(3) After paragraph (6) insert—

“(6A) In relation to a non-cooperating third country listed on a list established under Article 33 of the Council Regulation, it is an offence for a person—

(a) to import fishery products caught by a fishing vessel flying the flag of the third country unless the products are from stock or species to which the listing does not apply;

(b) to purchase a fishing vessel flying the flag of the third country;

(c) to reflag a fishing vessel flying the flag of a member State so that it flies the flag of the third country;

(d) to enter into a charter agreement with the third country in relation to a fishing vessel flying its flag;

(e) to export a Community fishing vessel to the third country;

(f) to enter into an agreement for a fishing vessel flying the flag of a member State to use the fishing possibilities of the third country; or

(g) to participate in joint fishing operations with a fishing vessel flying the flag of the third country.”.

(4) After paragraph (11) insert—

“(12) Paragraph (6A)(e) is an “equivalent provision” for the purposes of—

(a) the Sea Fishing (Illegal, Unreported and Unregulated Fishing) (Scotland) Order 2013(c); and

(b) the Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order (Northern Ireland) 2018(d)”.

(a) 1998 c. 46.

(b) 2006 c. 32. The definition of “Welsh zone” was inserted by section 43(1) and (2) of the Marine and Coastal Access Act 2009 (c. 23).

(c) S.S.I. 2013/189.

(d) S.R. 2018 (N.I.) No. 106.

Omission of article 11

6. Omit article 11 (recovery of fines).

Amendment of article 21

7.—(1) Article 21 (admissibility of documents in evidence) is amended as follows.

(2) In paragraph (2)—

- (a) in sub-paragraph (a), for “kept under Article 6 or 17(2)” substitute “referred to in Article 14”;
- (b) in sub-paragraph (b), for “a declaration submitted under Article 8(1), 9, 12, 17(2) or 28F” substitute “a landing declaration referred to in Article 23”;
- (c) in sub-paragraph (c), for “submitted under Article 9” substitute “referred to in Articles 62 and 64”;
- (d) in sub-paragraph (d), for “document drawn up under Article 13” substitute “transport document referred to in Article 68”;
- (e) in sub-paragraph (e), for “Article 3(7)” substitute “Article 9(7)”; and
- (f) after sub-paragraph (e) insert—
 - (f) a transhipment declaration referred to in Article 21 of the Control Regulation;
 - (g) a take-over declaration referred to in Article 66 of the Control Regulation.”.

(3) In paragraph (3), for “Article 3(1)” substitute “Article 9(1)”.

(4) In paragraph (6), for “Council Regulation (EEC) No 2847/93 establishing a control system applicable to the common fisheries policy” substitute “Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy”(a).

Amendment of the Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014

8. The Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014(b) are amended in accordance with regulations 9 to 11.

Amendment of regulation 1

9. In regulation 1(2) (extent), after “8(5)” insert “, 8(6)”.

Amendment of regulation 8

10. In regulation 8 (allocation of points in respect of convictions and administrative sanctions in other member States and third countries), after paragraph (5) insert—

“(6) If the allocation of points under this regulation triggers a suspension or disqualification under regulation 10 or under a corresponding Scottish enactment, the Marine Management Organisation must ensure that the start date of the suspension or disqualification is at least one calendar day after it is included in the register.”.

Amendment of regulation 10

11.—(1) Regulation 10 (suspension and disqualification) is amended as follows.

- (2) In paragraph (4)(b), for “if” substitute “if later, in a case where”.
- (3) After paragraph (5) insert—

(a) OJ No. L 343, 22.12.2009, p. 1, as last amended by Regulation (EU) No. 2015/812 of the European Parliament and of the Council (OJ No. L 133, 29.5.2015, p. 1).

(b) S.I. 2014/3345.

“(5A) If a master is already suspended from mastering a vessel when the master accumulates points triggering a further suspension period under this regulation, the further suspension period starts on the expiry of the existing suspension period.”.

22nd May 2018

George Eustice
Minister of State
Department for Environment, Food and Rural Affairs

22nd May 2018

Lesley Griffiths
Cabinet Secretary for Energy, Planning and Rural Affairs,
one of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009 (S.I. 2009/3391) (“the 2009 Order”) and the Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014 (S.I. 2014/3345) (“the 2014 Regulations”). They implement provisions of Article 38 of Council Regulation (EC) No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (OJ No. L 286, 29.10.2008, p. 1) and of Article 92(6) of Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (OJ No. L 343, 22.12.2009, p. 1).

Regulation 3 substitutes new extent and application provisions for article 2 of the 2009 Order.

Regulation 4 amends article 3 of the 2009 Order in relation to various definitions.

Regulation 5 amends article 9 of the 2009 Order to clarify the provisions of Article 9(4) and to extend the offence provisions relating to non-cooperating third countries listed under Article 33 of Council Regulation (EC) No. 1005/2008, implementing Article 38 of that Regulation.

Regulation 6 revokes article 11 of the 2009 Order regarding recovery of fines.

Regulation 7 amends article 21 of the 2009 Order to update references to an EU instrument and to add transshipment declarations and takeover declarations to the list of documents admissible in evidence in any proceedings in respect of an offence under the 2009 Order.

Regulations 8 to 11 amend provisions in regulations 1, 8 and 10 of the 2014 Regulations relating to the start date of a suspension period or the disqualification of a master under those Regulations.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

Explanatory Memorandum to Sea Fish (Marketing Standards) (England and Wales and Northern Ireland) Regulations 2018

This Explanatory Memorandum has been prepared by the Environment, Planning and Rural Affairs Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Sea Fisheries (Miscellaneous Amendments) Regulations 2018

Lesley Griffiths
Cabinet Secretary for Energy, Planning and Rural Affairs.

DATE: 22 May 2018

1. Description

The Sea Fisheries (Miscellaneous Amendments) Regulations 2018 (“the Regulations”) amend the Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009 (S.I. 2009/3391) (“the 2009 Order”) and the Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014 (“the 2014 Regulations”).

The Regulations amend the 2009 Order to update the extent and application of the 2009 Order and insert the necessary additional definitions to clarify Article 9(4) of that Order. They also extend the offence provisions relating to non-cooperating third countries (implementing Article 38 of Council Regulation (EC) No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing). The Regulations also omit Article 11 of the 2009 Order (which dealt with the recovery of fines) as it is now redundant (the relevant enforcement powers are now set out in Part 8 of the Marine and Coastal Access Act 2009) and update the relevant references to EU legislation found in Article 21 of the 2009 Order.

In relation to the 2014 Regulations, Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (“the Control Regulation”) requires Member States to establish a ‘penalty points’ system whereby masters of fishing vessels are assigned an appropriate number of points as a result of serious fisheries offences. The Regulations amend the 2014 Regulations to improve clarity regarding when a suspension or disqualification of a vessel master is to commence.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

The Regulations are made on a composite basis to maintain the clarity, accessibility and transparency of the statute book for those required to comply with its provisions. As this composite instrument is subject to approval by the National Assembly for Wales and by the UK Parliament, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

The Regulations are made subject to the negative procedure.

These Regulations are made under section 2(2) of the European Communities Act 1972 and section 30(2) of the Fisheries Act 1981. Instruments made under section 30(2) of the 1981 Act are subject to negative procedure (by virtue of section 30(4) of the 1981 Act). There is a choice of procedure in relation to instruments made under section 2(2) of the European Communities Act 1972. There were no factors indicating the use of affirmative procedure for these Regulations and bearing in mind both the powers in section 30(2) of the 1981 Act carries negative procedure and the two instruments being amended were made following negative procedure, it is proposed the Regulations are also made subject to the negative procedure. The amendments to the 2014 Regulations are made in response to a technical report issued by the Committee at the time of their making.

3. Legislative background

The Welsh Ministers make the Regulations in relation to Wales pursuant to powers in section 30(2) of the Fisheries Act 1981 and section 2(2) European Communities Act 1972.

For the purposes of section 2(2) of the 1972 Act, the Welsh Ministers are designated in relation to the Common Agricultural Policy and, therefore, the Common Fisheries Policy, by virtue of article 3(1) of the European Communities (Designation) (No 5) Order 2010 (SI 2010/760) in relation to Wales and the Welsh zone.

The Welsh Ministers are able to exercise powers under section 30(2) of the Fisheries Act 1981 in relation to Wales, the Welsh zone and Welsh fishing boats beyond that zone. Functions under section 30 of the 1981 Act were transferred to the National Assembly for Wales and then to the Welsh Ministers by the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672) and paragraph 30 of Schedule 11 to the Government of Wales Act 2006. Those functions were further transferred to the Welsh Ministers in relation to the Welsh zone by the Welsh Zone (Boundaries and Transfer of Functions) Order 2010 (SI 2010/760) and in relation to Welsh Fishing Boats beyond that zone by section 59A of and paragraph 2(1) of Schedule 3A to the Government of Wales Act 2006.

Council Regulation (EC) No. 1005/2008 (“the IUU Regulation”) establishes a Community system to prevent, deter and eliminate IUU fishing. Provisions in the IUU Regulation allow the European Council to list fishing vessels engaged in IUU fishing (“listed IUU vessels”) and countries which it considers are not cooperating in the fight against IUU fishing (“non-cooperating third countries”). Article 37 of the IUU Regulation sets out the measures that apply in relation to listed IUU vessels. Article 38 sets out the measures that apply in relation to non-cooperating third countries.

The 2009 IUU Order made provision for the enforcement of the IUU Regulation and Article 9 created offence provisions in respect of listed IUU vessels, implementing provisions of Article 37 of the IUU Regulation.

In 2014 Council Implementing Decision 2014/170/EU established the first list of non-cooperating third countries pursuant to the IUU Regulation.

This instrument implements the provisions of Article 38 of the IUU Regulation by extending the offence provisions in Article 9 of the 2009 IUU Order so that they relate to non-cooperating third countries.

This instrument also amends the 2014 Points for Masters Regulations. These 2014 Regulations set up a system for the allocation of points to masters of England, Wales and Northern Ireland fishing boats who have committed serious infringements of EU fisheries law in accordance with Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy. The 2014 Regulations provide for the setting up and maintenance of a register that details the points allocated to convicted masters and/or any disqualification that arises from them.

During the making of the 2014 Regulations the Assembly's Constitutional and Legislative Affairs Committee issued a technical report regarding the clarity of when a suspension or disqualification of a vessel master (pursuant to the other provisions of those 2014 Regulations) is to commence. These Regulations make the amendments necessary to provide that clarity.

4. Purpose & intended effect of the legislation

In 2014, the European Commission published, for the first time, a list of non-cooperating third countries and the 2009 IUU Order needs to be amended to take account of this list and to ensure that we can fully implement and enforce these measures and meet our obligations under the EU IUU Regulation. Failure to do so could leave the United Kingdom open to infraction proceedings as well as reputational damage arising from criticism from other member states and the wider Non-Governmental Organisation community.

The amendments to the 2009 IUU Order include amendments which extend the offence provisions in the 2009 IUU Order relating to non-cooperating third countries to implement the measures set out in Article 38 of the IUU Regulation. The extended offences are as follows:

1. importing fishery products caught by a fishing vessel flying the flag of a listed non-cooperating third country unless the products are from stock or species to which the listing does not apply,
2. purchasing a fishing vessel flying the flag of a listed non-cooperating country,
3. reflagging a fishing vessel flying the flag of a member state so that it flies the flag of a listed non-cooperating third country,
4. entering into a charter agreement in relation to a fishing vessel flying the flag of a listed non-cooperating third country,
5. exporting a community fishing vessel to a listed non-cooperating third country,
6. entering into an agreement for a fishing vessel flying the flag of a member state to use the fishing possibilities of the listed non-cooperating third country,
7. participating in joint fishing operations with a fishing vessel flying the flag of the listed non-cooperating third country.

The offences will be incorporated into those offences already listed in article 9 of the 2009 IUU Order.

The SI makes additional amendments to the 2009 Order, for the purposes of clarification and to update references to applicable EU instruments. It also revokes a provision in the 2009 IUU Order regarding recovery of fines, because there are now

enforcement powers, including provisions for forfeiture, set out in Part 8 of the Marine and Coastal Access Act 2009

This SI also amends the 2014 Points for Masters of Fishing Boats Regulations. These amendments have been made following a technical report of the Constitutional and Legislative Affairs Committee, upon the making of the 2014 Regulations, in relation to concerns about a lack of clarity regarding the start date of any suspension period or the disqualification of a master. This SI makes the necessary changes to the 2014 Regulations to improve clarity on this point.

5. Consultation

The measures in this Statutory Instrument do not require consultation as the intention is to make technical amendments to the 2009 Order and the 2014 Regulations in order to enable those instruments to reflect their original intention.

There are no plans to issue guidance. This is a simple measure the principal purpose of which is to extend offences to third countries identified as non-cooperating under the Illegal, Unreported and Unregulated fishing (IUU) legislation and to provide clarity with regard to the commencement of suspension periods and disqualification under the Points for Masters Regulations.

6. Regulatory Impact Assessment (RIA)

An RIA has not been completed for these Regulations. The Regulations are not expected to impose an additional cost on the public or voluntary sectors in Wales. Similarly, the Regulations are not expected to impose an additional cost on fisheries businesses which comply with the law, however, costs may be incurred by businesses which choose to operate outside of the law

Failure to introduce these Regulations risks infraction proceedings against the UK by the EU and the associated costs.

SL(5)221 – The Water Supply (Water Quality) Regulations 2018

Background and Purpose

These Regulations will revoke and replace the Water Supply (Water Quality) Regulations 2010. The Regulations transpose the additional requirements specified by Commission Directive (EU) 2015/1787, which aligns with the World Health Organisation principles for the risk based sampling and analysis of drinking water supply, reflecting scientific and technical progress in the protection of public health.

The Regulations are primarily concerned with the quality of water supplied by water undertakers whose areas are wholly or mainly in Wales (and water supply licensees using the supply systems of such undertakers) for drinking, washing, cooking and food preparation, and for food production, and with arrangements for the publication of information about water quality.

Procedure

Negative.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument:

1. These Regulations have been made in English only. The explanatory memorandum says that they will apply to the operation of water companies providing drinking water wholly or mainly in Wales. However, they also apply in parts of England and are therefore laid simultaneously in Parliament and the National Assembly for Wales as required by section 59(4) of the Government of Wales Act 2006. No reason is specified in the explanatory memorandum as to why these regulations are made in English only.

(S.O. 21.2(ix) that it is not made or to be made in both English and Welsh).

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument:

1. These Regulations directly transpose the requirements of Council Directive 98/83/EC (the Drinking Water Directive (DWD)) as amended by Commission Directive (EU) 2015/1787. The transposition deadline for the 2015 Directive was 27 October 2017. This deadline has not been met and these regulations are laid some 8 months after this deadline. In chapter 2 of the explanatory memorandum the Welsh Government give the following explanation for the delay in implementation:

"The regulations impact on water undertakers who have responsibilities in both England and Wales. Following engagement with the water companies, officials agreed to align the Welsh set of

Regulations with the English Regulations; to ensure water companies were not working to two different sets of Regulations with differing requirements, which would impact on their operational efficiency and removes duplication of work within the affected water undertakers. Officials therefore agreed to work to Defra's timeline to ensure that any changes made to the English Regulations were also included in the Welsh Regulations.

Defra's timeline has been delayed due to a number of circumstances including delays in their consultation process. If the Welsh Regulations were laid before the final amendments to the English Regulations were made, the regulations would once again differ in specifics for no policy reason. This would not be in the interests of the water undertakers impacted by these Regulations. Defra accept that the delay in laying these regulations is due to the English timeline slipping."

(S.O. 21.3 (iv) that it inappropriately implements European Union legislation.)

Implications arising from exiting the European Union

These Regulations are made partly under section 2(2) of the European Communities Act 1972. These Regulations arise from EU obligations under EU Commission Directive 2015/1787 in respect of the quality of water intended for domestic purposes or for use in food production. These Regulations will form part of retained EU law after exit day.

Government Response

A Government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee

6 June 2018



W E L S H S T A T U T O R Y I N S T R U M E N T S

2018 No. 647 (W. 121)

WATER, ENGLAND AND WALES

The Water Supply (Water Quality) Regulations 2018

<i>Made</i> - - - -	22 May 2018
<i>Laid before the National Assembly for Wales</i>	25 May 2018
<i>Laid before Parliament</i>	30 May 2018
<i>Coming into force</i> - -	15 June 2018

The Welsh Ministers are designated(1) for the purposes of section 2(2) of the European Communities Act 1972(2) in relation to the quality of water intended for domestic purposes or for use in a food production undertaking.

The Welsh Ministers make these Regulations in exercise of the powers conferred upon them by section 2(2) of the European Communities Act 1972 and sections 67, 69, 77(3) and (4) and 213(2) of the Water Industry Act 1991(3).

(1) S.I. 2004/3328, as amended by S.I. 2005/850, S.I. 2007/1349, S.I. 2008/301, S.I. 2012/1759 and S.I. 2014/1362. The functions conferred on the National Assembly for Wales by means of that Order are now exercisable by the Welsh Ministers by virtue of section 162 of and paragraphs 28 and 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(2) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).

(3) 1991 c. 56. The functions of the Secretary of State under section 67 were transferred to the National Assembly for Wales (“the Assembly”) (a) for the making of regulations concerning water supplied using the supply system of a water undertaker, in relation to the supply system of any water undertaker whose area is wholly or mainly in Wales and (b) for the making of regulations concerning water supplied other than using the supply system of a water undertaker, in relation to Wales, by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) (“the 1999 Order”); the functions of the Secretary of State under section 69 were, in relation to any water undertaker whose area is wholly or mainly in Wales and any licensed water supplier so far as relating to licensed activities using the supply system of any such water undertaker transferred to the Assembly by the same provisions of the Order; the functions of the Secretary of State under section 77 were transferred to the Assembly in relation to Wales by the same provisions of the 1999 Order; the functions of the Secretary of State under section 213 were exercisable by the Assembly to the same extent as the powers to which that section applies were made exercisable by the Assembly by virtue of the same provision of the 1999 Order: see the entry in Schedule 1 to the 1999 Order. References in Schedule 1 to the 1999 Order to specific sections of the Act are treated by section 100(6) of the Water Act 2003 (“the 2003 Act”) as referring to those sections as amended by the 2003 Act. References to “licensed water suppliers” or the singular term in Schedule 1 to the 1999 Order now read “water supply licensees” or the singular term following the amendments in paragraph 127 of Schedule 7 to the Water Act 2014 (“the 2014 Act”); there are other amending instruments but none are relevant. By virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006, the functions conferred on the Assembly are now exercisable by the Welsh Ministers. Section 69 of the Act was amended by paragraph 19 of Schedule 8, and Part 3 of Schedule 9, to the 2003 Act, and paragraph 68 of Schedule 7 to the 2014 Act. Section 213 of the Act was amended by paragraph 28 of Schedule 1 to the Competition and Service (Utilities) Act 1992 (c. 43) and by section 56 of, and paragraph 119(4) of Schedule 7 to the 2014 Act.

PART 1

General

Title, commencement and application

1.—(1) The title of these Regulations is the Water Supply (Water Quality) Regulations 2018 and they come into force on 15 June 2018.

(2) Parts 1 to 9 and 11 of these Regulations apply in relation to the supply of water by every—

- (a) water undertaker⁽¹⁾ whose area is wholly or mainly in Wales; and
- (b) water supply licensee⁽²⁾ so far as relating to licensed activities using the supply system of any water undertaker whose area is wholly or mainly in Wales.

(3) Part 10 of these Regulations applies to local authorities in Wales, as regards the discharge of functions under that Part, in relation to every—

- (a) water undertaker whose area is wholly in Wales;
- (b) water undertaker whose area is partly in Wales and partly in England, but only in respect of the part in Wales; and
- (c) water supply licensee so far as relating to licensed activities using the supply system situated in Wales of any water undertaker.

Interpretation

2.—(1) In these Regulations—

“the 2010 Regulations” means the Water Supply (Water Quality) Regulations 2010⁽³⁾;

“the Act” means the Water Industry Act 1991;

“appropriate local authority”, in relation to—

- (a) a departure authorised under regulation 22,
- (b) an application for any such authorisation, or
- (c) an event specified in regulation 35(6),

means a local authority⁽⁴⁾ whose area contains any part of the water supply zone to which the authorisation relates or, in the case of an application, would relate if a departure were authorised in the terms sought, or whose area is affected or is likely to be affected by the event;

“blending point” means a point at which water originating from two or more sources and treated for the purposes of their supply for regulation 4(1) purposes are combined under conditions that are designed to secure that, after such combination, the requirements of regulation 4(2) are met;

“Chapter III” means Chapter III (quality and sufficiency of supplies) of Part III (water supply) of the Act;

“consumer” means a person to whom water is supplied for regulation 4(1) purposes by a relevant supplier in the discharge of its duties under Chapter III;

“disinfection” means a process of water treatment to remove or render harmless to human health, every pathogenic micro-organism and pathogenic parasite that would otherwise be present in the water; and

“disinfected” shall be construed accordingly;

“*E.coli*” means *Escherichia coli*;

(1) See section 6 of the Act for the meaning of “water undertaker”.

(2) See sections 17A and 219(1) of the Act for the meaning of “water supply licensee”. Section 17A was substituted by section 1 of the Water Act 2014. Section 219(1) was amended by section 56 of, and paragraph 120(2)(f) of Schedule 7 to, the Water Act 2014; there are other amendments but none are relevant.

(3) S.I. 2010/994 (W. 99); as amended by S.I. 2011/14 (W. 7), S.I. 2013/235, S.I. 2013/1387, S.I. 2016/410 (W. 128), S.I. 2017/506 and S.I. 2017/1041 (W. 270).

(4) See section 219 of the Act (as amended by paragraph 2(2) of Schedule 11 to the Local Government (Wales) Act 1994 (c. 19)) for the meaning of “local authority”.

“groundwater” means water contained in underground strata, and section 221(3) of the Water Resources Act 1991 (general interpretation) (1) will have effect for the purpose of this definition as it has effect for the purpose of construing references in that Act to water contained in underground strata;

“Group A parameter” means a parameter specified in column 2 of Table 1 in Schedule 3;

“Group B parameter” means a parameter specified in column 2 of Table 2 or, as the case may be, Table 3 in Schedule 3;

“indicative dose” means the committed effective dose for 1 year of ingestion resulting from all the radionuclides whose presence has been detected in a supply of water intended for human consumption, of natural and artificial origin, excluding tritium, potassium-40, radon and short-lived radon decay products;

“indicator parameter” means a parameter listed in Schedule 2;

“monitoring of a group A parameter” has the meaning given in regulation 5(1);

“monitoring of a group B parameter” has the meaning given in regulation 5(3);

“NTU” means Nephelometric Turbidity Unit;

“parameter” means a property, element, organism or substance listed in the second column of Table A or Table B in Schedule 1 to these Regulations, or in Schedule 2, as read, where appropriate, with the notes to Schedule 2 and those Tables;

“pesticides and related products” means any of the following, and includes their relevant metabolites, degradation and reaction products—

- (a) any organic insecticide;
- (b) any organic herbicide;
- (c) any organic fungicide;
- (d) any organic nematocide;
- (e) any organic acaricide;
- (f) any organic algicide;
- (g) any organic rodenticide;
- (h) any organic slimicide; and
- (i) any product related to any of (a) to (h) (including any growth regulator);

“parametric value” and “prescribed concentration or value”, in relation to any parameter, means the maximum or minimum concentration or value specified in relation to that parameter in Table A or Table B in Schedule 1 as measured by reference to the unit of measurement so specified and as read, where appropriate, with the notes to those Tables;

“Public Health England” means the executive agency of that name of the Department of Health and Social Care;

“Public Health Wales National Health Service Trust” means a National Health Service Trust within the meaning of the National Health Service (Wales) Act 2006(2) if, and in so far as, it has the function of providing services in relation to public health in Wales(3);

“radioactive parameters” means the following indicator parameters listed in Schedule 2—

- (a) indicative dose (item 8);
- (b) radon (item 9);
- (c) tritium (item 12);

“regulation 4(1) purposes”, in relation to the supply of water, means a supply—

(1) 1991 c.57.

(2) 2006 c.42.

(3) See S.I. 2009/2058 (W. 177) which established the NHS trust called the Public Health Wales National Health Service Trust or Ymddiriedolaeth Gwasanaeth Iechyd Gwladol Iechyd Cyhoeddus Cymru.

(a) for such domestic purposes as consist in or include, cooking, drinking, food preparation or washing;
or

(b) for any of those domestic purposes, to premises in which food is produced⁽¹⁾;

“relevant supplier” means a water undertaker or water supply licensee;

“retail licensee” means a person who is the holder of a water supply licence with a restricted retail authorisation within the meaning of Schedule 2A to the Act⁽²⁾;

“sampling point”—

(a) in relation to water supplied from a distribution network, means a point, being a consumer’s tap, that is selected for the purposes of Part 4 of these Regulations;

(b) in relation to water supplied from a tanker, means the point at which the water emerges from the tanker;

“specification”, in relation to an indicator parameter, means the concentration, value or state, shown as applicable to that parameter in Schedule 2 as measured by reference to the unit of measurement so shown;

“state”, in relation to an indicator parameter, means the state specified in relation to that parameter in Schedule 2 as measured by reference to the unit of measurement so specified;

“suitably accredited body” means the Welsh Ministers or a person acting on behalf of the Welsh Ministers;

“supplementary licensee” means a person who is the holder of a water supply licence with a supplementary authorisation within the meaning of Schedule 2A to the Act;

“supply point” means a blending point, service reservoir, treatment works or other point, not being a sampling point, which the Welsh Ministers authorise under regulation 8 for the purposes of regulation 6;

“supply system” is to be construed in accordance with section 17B(5) of the Act (section 17A: supplementary)⁽³⁾;

“water of a relevant description” means water supplied by a relevant supplier which uses a supply system for the purposes of supplying water to consumers, being a supply system into which the water undertaker or supplementary licensee introduces water;

“water supply zone”, in relation to a water undertaker and a year, means an area designated for that year by the water undertaker in accordance with regulation 3; and

“year” means a calendar year.

(2) In these Regulations a reference to an application or notice includes a reference to that application or notice in electronic form.

(3) In these Regulations, a “monitoring programme” is the identification and collection of data on any substance or organism identified during a risk assessment to confirm compliance with the prescribed concentrations set out in Schedule 1, and—

(a) must consist of—

(i) collection and analysis of discrete water samples;

(ii) measurements recorded by a continuous monitoring process; or

(iii) a combination of both of the methods described in paragraph (i) and (ii) at the frequency required in Schedule 3 or at a frequency notified to the water undertaker or supplementary licensee; and

(b) may also consist of—

(i) inspections of records of the functionality and maintenance of status of equipment; and

(1) See section 93(1) of the Act for the meaning of “food production purposes”.

(2) Schedule 2A was inserted by paragraph 1 of Schedule 1 to the Water Act 2014.

(3) Section 17B was inserted by paragraph 2 of Schedule 4 to the Water Act 2003. Section 17B was amended by section 2 of, and paragraph 6 of Schedule 5 and paragraph 10 of Schedule 7 to, the Water Act 2014.

- (ii) inspections of the catchment area, water abstraction, treatment, storage and distribution infrastructure.

(4) Subject to paragraph (4), references in these Regulations to a service reservoir are references to any structure in which a reserve of water that has been treated with a view to complying with the requirements of regulation 4 is contained and stored for the sole purpose of meeting a variable demand for the supply of water.

(5) Where references in these Regulations to a service reservoir would, but for this paragraph, include references to a structure comprising more than one compartment—

- (a) each compartment which has its own water inlet and water outlet and is not connected hydraulically to any other compartment will be treated as a single service reservoir;
- (b) the compartments that are connected hydraulically will be treated as a single service reservoir; and
- (c) unless all of the compartments are connected hydraulically, the structure as a whole will not be treated as a service reservoir.

PART 2

Water Supply Zones

Water supply zones

3.—(1) Before the beginning of each year in which it intends to supply water, a water undertaker must designate the names and areas within its area of supply that are to be its water supply zones for that year.

(2) A water supply zone may not comprise an area whose population immediately before the beginning of the year in question is estimated by the water undertaker to exceed 100,000.

(3) The water quality within a water supply zone must be approximately uniform.

(4) A water undertaker may not vary a designation under paragraph (1) after the beginning of the year in relation to which the designation has effect.

PART 3

Wholesomeness

Wholesomeness

4.—(1) Subject to paragraphs (4) and (5), water supplied to premises that is intended for human consumption including—

- (a) for such domestic purposes as consist in or include, cooking, drinking, food preparation or washing, or
- (b) for food production purposes,

is to be regarded as wholesome for the purposes of Chapter III, as it applies to the supply of water for those purposes, if the requirements of paragraph (2) are satisfied.

(2) The requirements of this paragraph are—

- (a) that the water does not contain—
 - (i) any micro-organism (other than a parameter listed in Schedule 1) or parasite, or
 - (ii) any substance (other than a parameter listed in Schedule 1),at a concentration or value which would constitute a potential danger to human health;
- (b) that the water does not contain any substance (whether or not a parameter) at a concentration or value which, in conjunction with any other substance it contains (whether or not a parameter) would constitute a potential danger to human health;

- (c) that the water does not contain concentrations or values of the parameters listed in Tables A and B in Schedule 1 in excess of or, as the case may be, less than, the prescribed concentrations or values; and
- (d) that the water satisfies the formula “[nitrate]/50 + [nitrite]/3 < 1”, where the square brackets signify the concentrations in mg/l for nitrate (NO₃) and nitrite (NO₂).

(3) The point at which the requirements of paragraph (2), in so far as they relate to the parameters set out in Part 1 of Table A and in Table B in Schedule 1 are to be complied with is—

- (a) in the case of water supplied from a tanker, the point at which the water emerges from the tanker;
- (b) in the case of water supplied in bottles or containers, the point at which the water first emerges from any bottle or container collected from a local distribution point;
- (c) in the case of water used in a food production undertaking, the point at which it is used in the undertaking; and
- (d) in any other case, the consumer’s tap.

(4) Water supplied for regulation 4(1) purposes will not be regarded as wholesome for the purposes of Chapter III if, on transfer from a treatment works for supply for those purposes—

- (a) it contains a concentration of the coliform bacteria or *E coli* parameter (items 1 and 2 in Part 2 of Table A in Schedule 1) in excess of the prescribed concentrations; or
- (b) it contains a concentration of nitrite in excess of 0.1 mg NO₂/l.

(5) Subject to paragraph (6), water supplied for regulation 4(1) purposes will not be regarded as wholesome for the purposes of Chapter III if, on transfer from a service reservoir for supply for those purposes, it contains a concentration of the coliform bacteria or *E coli* parameter in excess of the prescribed concentrations.

(6) Water transferred from a service reservoir for supply for regulation 4(1) purposes is to be regarded as unwholesome if more than 5% of samples taken in a year exceed the prescribed concentration for the coliform bacteria parameter.

PART 4

Monitoring of Water Supplies

Interpretation and application of Part 4

5.—(1) In this Part “monitoring of a Group A parameter” means monitoring of a Group A parameter for the purpose of obtaining information at regular intervals—

- (a) as to the organoleptic and microbiological quality of water;
- (b) where relevant, as to the effectiveness of drinking water treatment, particularly for the purposes of disinfection, for the purposes referred to in paragraph (2); and
- (c) as regards indicator parameters, whether water supplied for regulation 4(1) purposes meets the specifications for those parameters.

(2) The purpose of monitoring of a Group A parameter is to determine whether the presence of such a parameter in water supplied for regulation 4(1) purposes satisfies the provisions of Part 3 or, if a departure has been authorised under Part 7 in relation to that supply, the provisions of Part 3 as read with the terms of that departure.

(3) In this Part, “monitoring of a Group B parameter” means monitoring of a Group B parameter for the purpose of obtaining information from which it may be established whether water supplied for regulation 4(1) purposes—

- (a) satisfies the provisions of Part 3 or, if a departure has been authorised under Part 7 in relation to that supply, the provisions of Part 3 as read with the terms of that departure;
- (b) meets the specifications for indicator parameters; and

- (c) in respect of other parameters identified as relevant by the Welsh Ministers under regulation 9, meets the specifications for those parameters.

(4) This Part applies to water supplied for regulation 4(1) purposes by a relevant supplier in the performance of its duties under Chapter III.

(5) Regulations 6 to 10 apply to a supplementary licensee in relation to samples taken from supply points as they apply to a water undertaker, but only in so far as the supplementary licensee is introducing water into a water supply zone in which the water undertaker takes samples under this Part (to the extent authorised by or under regulation 8) from supply points.

Monitoring: general provisions

6.—(1) Paragraph (2) applies for the purpose of determining whether water to which this Part applies satisfies the provisions of Part 3 or, if a departure has been authorised under Part 7 in relation to that supply, those provisions as read with the terms of that authorisation.

(2) A water undertaker must take or cause to be taken, and analyse or cause to be analysed, not less than the number of samples of the water within each of the water supply zones which it supplies specified in, or in accordance with the provisions of, this Part and Schedule 3.

(3) Except in a case to which paragraph (4) applies, the parameters listed in Tables A and B in Schedule 1 and the indicator parameters must be subject to—

- (a) monitoring of a Group A parameter if the parameter is one listed in column 2 of Table 1 in Schedule 3, and the circumstances specified in column 3 of that Table apply; and
- (b) monitoring of a Group B parameter in any other case.

(4) Where the distribution of water in any part of a water supply zone is by tanker and is (or is likely to be) an intermittent short-term supply, samples of water from each tanker from which the water is distributed must be taken—

- (a) at the commencement of the distribution from that tanker; and
- (b) every 48 hours thereafter until the distribution is discontinued.

(5) Of the samples taken in accordance with paragraph (3) in relation to each distribution—

- (a) the first sample must be analysed for compliance with the following parameters—
 - (i) *E. coli* (item 2 in Part 2 of Table A in Schedule 1); and
 - (ii) conductivity (item 6 in Schedule 2); and
- (b) the second and any subsequent samples must be analysed for compliance with those and every other parameter.

(6) For the purposes of the application of paragraph (3)(b) to the aluminium, iron and manganese parameters (items 1, 9 and 10 in Table 1 in Schedule 3, a supply which consists of both groundwater and surface water will be deemed to be a supply which consists only of surface water.

(7) Compliance samples for chemical parameters, including copper, lead and nickel must take the form of a random daytime sample of one litre volume taken at a consumer's tap without prior flushing.

(8) A water undertaker must monitor each water supply zone within its area of supply for the radioactive parameters contained in Schedule 2 in accordance with paragraphs (9) to (16).

(9) As regards the indicative dose parameter—

- (a) monitoring must be carried out where an artificial source of radionuclides or elevated natural radioactivity is present and it cannot be shown on the basis of other representative monitoring programmes or other investigations that the level of indicative dose is below the value specified in Schedule 2;
- (b) where monitoring for natural radionuclide levels is required, the Welsh Ministers must define the frequency of the monitoring of either gross alpha activity, gross beta activity or individual natural radionuclides, depending on the screening strategy adopted in accordance with Schedule 4;
- (c) where the monitoring frequency defined in accordance with sub-paragraph (b) requires one sample per year for naturally occurring radioactivity, a further sample must be taken where any change

occurs in relation to the supply that is likely to influence the concentrations of radionuclides in water supplied for regulation 4(1) purposes;

- (d) in the case of naturally occurring radionuclides where the results of the monitoring referred to in sub-paragraph (b) show that the concentration of radionuclides in the supply is stable, the minimum sampling and analysis frequencies are to be decided by the Welsh Ministers and confirmed by notice to the water undertaker, taking into account the risk to human health;
- (e) a water undertaker may use a screening strategy for gross alpha, gross beta activity or individual radionuclides and, in the event that there is any exceedance of the value specified in Schedule 2, it must carry out an analysis of the specific radionuclides in accordance with Schedule 4.

(10) As regards the radon parameter—

- (a) a water undertaker must ensure that a representative survey is carried out in accordance with paragraph (11) to determine the likelihood of a supply failing the parametric value for radon specified in Schedule 2; and
- (b) monitoring must be carried out where there is 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.

(11) A representative survey must be designed in such a way—

- (a) as to be capable of determining the scale and nature of likely exposures to radon in water intended for human consumption originating from different types of groundwater sources and wells in different geological areas; and
- (b) that the underlying parameters, in particular 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.

(12) As regards the tritium parameter—

- (a) monitoring must be carried out where an anthropogenic source of tritium or other artificial radionuclides is present within the catchment area and it cannot be shown on the basis of other surveillance programmes or investigations that the level of tritium is below the parametric value specified in Schedule 2; and
- (b) if the concentration of tritium exceeds its parametric value, an investigation of the presence of other artificial radionuclides must be carried out.

(13) Where a parametric value is exceeded in a particular sample, the Welsh Ministers must define the extent of re-sampling necessary to ensure that the measured values are representative of an average activity concentration for a full year.

(14) The Welsh Ministers may notify a water undertaker which supplies water to a water supply zone that a radioactive parameter need not be monitored if the Welsh Ministers are satisfied that, for the period specified in the notice, the water supplied to that zone for regulation 4(1) purposes—

- (a) gives rise to a calculated indicative dose that is below the parametric value specified in Schedule 2;
- (b) contains levels of radon that are below the parametric value specified in Schedule 2;
- (c) contains levels of tritium that are below the parametric value specified in Schedule 2.

(15) Where paragraph (14) applies, the Welsh Ministers must communicate the grounds for the notification to the European Commission with the necessary documentation supporting the decision (including the findings of any surveys, monitoring or investigations carried out).

(16) The Welsh Ministers must by notice in writing withdraw a notice under paragraph (14)—

- (a) given in relation to the indicative dose parameter, if the Welsh Ministers believe that water supplied to the zone in question for regulation 4(1) purposes gives rise to a calculated indicative dose that is likely to exceed the parametric value specified in Schedule 2;
- (b) given in relation to the radon parameter, if the Welsh Ministers believe that water supplied to the zone in question for regulation 4(1) purposes contains levels of radon that are likely to exceed the parametric value specified in Schedule 2;

- (c) given in relation to the tritium parameter, if the Welsh Ministers believe that water supplied to the zone in question for regulation 4(1) purposes contains levels of tritium that are likely to exceed the parametric value specified in Schedule 2.

(17) A water undertaker which receives a notice under paragraph (16) must monitor or cause to be monitored the indicative dose parameter or, as the case may be, the radon or tritium parameter, in accordance with Tables 8 to 13 (as applicable) in Schedule 3.

Sampling points

7. Except in relation to water supplied from a tanker, sampling points in respect of every parameter, other than a parameter for which samples are taken from a supply point authorised by or under regulation 8, must be selected at random unless, by notice in writing to a water undertaker (whether or not on the application of the water undertaker), the Welsh Ministers otherwise determine.

Authorisation of supply points

8.—(1) For those parameters specified as item 6 in column 1 of Table 1, and items 1 to 11 and 14 to 21 in column 1 of Table 3, in Schedule 3, samples may be taken from —

- (a) any blending point;
- (b) the water leaving any service reservoir which receives water from a treatment works before its supply to any consumer; and
- (c) the water leaving any treatment works.

(2) If the Welsh Ministers are satisfied that analysis of those samples will produce data which are unlikely to differ in any material respect from the data that would be produced from analysis within the sampling points, the Welsh Ministers may authorise the use for the purposes of regulation 6 of those samples taken for a water supply zone from a blending point, a service reservoir of that description or a treatment works.

(3) In respect of any water supply zone, the taking of samples from a supply point is not authorised by paragraph (2) where a supplementary licensee introduces water into the water supply zone unless the water quality within the water supply zone remains approximately uniform.

(4) Subject to paragraph (6), the Welsh Ministers may, in relation to any parameter not covered by an authorisation under paragraph (2), on the written application of a water undertaker or on the joint written application of a water undertaker and supplementary licensee, authorise the use for the purposes of regulation 6 of samples taken for a water supply zone otherwise than from a sampling point.

(5) An authorisation under paragraph (4) may extend to all samples in relation to that parameter or to such number or proportion of those samples as is specified in the authorisation.

(6) The Welsh Ministers must not grant an authorisation under paragraph (4) unless they are satisfied that analysis of samples taken from a point other than a sampling point will produce data in respect of the parameter in question which are unlikely to differ in any material respect from the data that would be produced in respect of that parameter from analysis of samples obtained from sampling points.

(7) Subject to paragraph (8), the Welsh Ministers may at any time modify or revoke an authorisation under paragraph (4).

(8) Unless it appears to the Welsh Ministers that the immediate modification or revocation of an authorisation under paragraph (4) is required in the interests of public health, they must not modify or revoke such an authorisation without giving to the water undertaker to which the authorisation relates at least 6 weeks' notice of their intention to modify or revoke.

(9) A water undertaker must notify the Welsh Ministers as soon as it has reasonable grounds for believing that an analysis of samples taken for a water supply zone from a point other than a sampling point would produce data in respect of the parameter in question which would differ in a material respect from the data produced by an analysis of samples taken from any of the sampling points within that zone.

(10) On being notified under paragraph (9) and without the need for prior notice to the water undertaker, the Welsh Ministers must revoke the authorisation.

Number of samples

9.—(1) In each year a water undertaker must take or cause to be taken from its sampling points, or to the extent authorised under regulation 8, from its supply points, the standard number of samples for analysis of residual disinfectant and each parameter listed in—

- (a) column (2) of Table 1 in Schedule 3 (Group A parameters);
- (b) column (2) of Table 2 in Schedule 3 (Group B1 parameters);
- (c) column (2) of Table 3 in Schedule 3 (Group B2 parameters);
- (d) column (2) of Table 4 in Schedule 3 (Group A1 parameters);
- (e) column (2) of Table 5 in Schedule 3 (Group A2 parameters);
- (f) column (2) of Table 6 in Schedule 3 (Group A3 parameters); and
- (g) column (2) of Table 7 in Schedule 3 (Group A4 parameters).

(2) In respect of any parameter not referred to in paragraph (1), the Welsh Ministers may specify—

- (a) the number of samples which a water undertaker must take or cause to be taken from its sampling points in each year; and
- (b) its prescribed concentration or value.

(3) Samples required to be taken by this regulation must—

- (a) be taken at regular intervals;
- (b) in respect of sampling for chemical parameters in the distribution network other than sampling at a consumer's tap, be taken, and handled in accordance with ISO 5667-5 entitled "*Water quality. Sampling. Guidance on treatment of drinking water from treatment works and piped distribution systems.*"⁽¹⁾; and
- (c) in respect of microbiological parameters in the distribution network and at a consumer's tap, be taken and handled in accordance with European Standard EN ISO 19458, entitled "*Water Quality – Sampling for microbiological analysis*"⁽²⁾, using sampling purpose A in the distribution network and sampling purpose B at a consumer's tap.

(4) Subject to paragraph (5) the Welsh Ministers may, in respect of any supplies of water by a water undertaker to a water supply zone, treatment works, supply point or a service reservoir, give the water undertaker written notice of any variation of—

- (a) the parameters subject to sampling (by the omission or addition of parameters); and
- (b) the number of samples which the undertaker must take in the period specified in the notice.

(5) Paragraph (4) does not apply in relation to *E.coli*.

(6) The Welsh Ministers may give a notice under paragraph (4)—

- (a) on the Welsh Ministers' own motion; or
- (b) where paragraph (8) applies, upon application by a water undertaker.

(7) A notice under paragraph (4)—

- (a) must specify which parameters are subject to variation;
- (b) must specify the extent of any variation from the standard number of samples required to be taken under paragraph (1) or from the number of samples required to be taken under paragraph (2);
- (c) may require a risk assessment to be undertaken;
- (d) may be revoked or varied by the Welsh Ministers.

(8) This paragraph applies where—

- (a) a risk assessment complying with this regulation has been undertaken;

(1) This standard was approved by the International Organization for Standardization (ISO) on 15 April 2006. Under reference BS ISO 5667-5:2006 it is published as a UK standard by the British Standards Institution (ISBN 0 580 47140 3).

(2) This standard was approved by the European Committee for Standardization (CEN) on 1 July 2006. Under reference BS EN ISO 19458:2006, it is published as a UK standard by the British Standards Institution (ISBN 0 5804 49136 6).

- (b) the results of the risk assessment described in sub-paragraph (a) are considered, and that risk assessment indicates that no factor can be reasonably anticipated to be likely to cause deterioration of the quality of the water;
- (c) in the case where the water undertaker seeks to cease monitoring a particular parameter, the results from samples taken in respect of the parameter collected at regular intervals over a period of at least 3 years are all at less than 30% of the parametric value of the parameter; and
- (d) in the case where the water undertaker seeks to reduce the frequency of monitoring in respect of a particular parameter, the results from samples taken in respect of that parameter collected at regular intervals over a period of at least 3 years are all at less than 60% of the parametric value of the parameter.

(9) The Welsh Ministers must by further written notice withdraw a notice under paragraph (4) if the Welsh Ministers believe that any parameter in the water supply to which the notice relates contravenes the prescribed concentration or value or is likely to do so.

(10) A water undertaker given notice under paragraph (4) must institute a monitoring programme which must be kept under annual review.

(11) A risk assessment complies with this regulation where—

- (a) it meets the principles of European standard EN 15975-2 entitled “*Security of drinking water supply - Guidelines for risk and crisis management - Part 2: Risk management*”(1) or of other equivalent standards accepted at international level;
- (b) it is subject to a system of quality control which is checked from time to time by a suitably accredited body; and
- (c) it takes into account the results of monitoring conducted under the second paragraph of Article 7(1) and Article 8 of Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy(2).

(12) In this regulation “the standard number” means the number of samples specified in Part 2 or Part 3 of Schedule 3 in respect of a parameter specified in Part 1 of that Schedule.

Sampling: further provisions

10.—(1) Paragraph (2) applies as soon as a relevant supplier has reasonable grounds for believing that any element, organism or substance, other than a residual disinfectant or a parameter (whether alone or in combination with any parameter or any other element, organism or substance) may cause the supply within any of the water supply zones which it supplies to be a supply which does not satisfy—

- (a) the provisions of Part 3; or
- (b) if a departure has been authorised under Part 7, those provisions as read with the terms of that authorisation.

(2) Where this paragraph applies, the relevant supplier must take or cause to be taken sufficient samples from water within that zone (whether from a service reservoir, a treatment works or otherwise) in respect of any element, organism or substances, in order to establish whether that water is wholesome.

(1) This standard was approved by the European Committee for Standardization (CEN) on 5 July 2013. Under reference BS EN 15975-2:2013, it is published as a UK standard by the British Standards Institution (ISBN 978 0 580 84737 0).
 (2) O.J. No L 327, 22.12.2000, p 1, as last amended by Commission Directive 2014/101/EU (OJ No L 311, 31.10.2014, p 32).

PART 5

Monitoring – Additional Provisions

Sampling for particular substances and parameters

11.—(1) For the purposes of establishing the quality of water to be supplied to any of its water supply zones, a water undertaker must take, or cause to be taken, and analyse, or cause to be analysed, not less than the number of samples specified in this Part.

(2) For the purposes of establishing the quality of water to be supplied in any supply system into which a supplementary licensee introduces water, a supplementary licensee must take, or cause to be taken, and analyse, or cause to be analysed, not less than the number of samples specified in this Part.

Sampling at treatment works

12.—(1) Subject to paragraph (3), in each year every water undertaker or supplementary licensee must take, or cause to be taken, from the point at which water leaves each treatment works which it uses to supply water to water supply zones, the standard number of samples for analysis—

- (a) for determining the concentration of residual disinfectant;
- (b) for determining whether, in relation to the colony counts and turbidity parameters, water leaving treatment works meets the specifications for those parameters set out in Schedule 2; and
- (c) for testing for compliance with the prescribed concentrations or values in respect of the coliform bacteria, *E coli*, and nitrite parameters for water leaving treatment works.

(2) Samples required to be taken by this regulation must be taken at regular intervals.

(3) Where a particular treatment works is in use for part only of a year, the minimum number of samples to be taken from that works in that year must bear to the standard number or, as the case may be, the number specified in a current notice given by the Welsh Ministers under regulation 9 which departs from the standard number, the same proportion as the number of days in that year in which the treatment works have been in use bears to 365.

(4) In this regulation, “the standard number” has the same meaning as in regulation 9.

Sampling at service reservoirs

13.—(1) Every water undertaker or supplementary licensee must take, or cause to be taken, from each of its service reservoirs in each week in which the reservoir is in use or as directed by notification by the Welsh Ministers under regulation 9(4), one sample for analysis—

- (a) for testing for compliance with the prescribed concentrations or values in respect of the parameters *E coli* and coliform bacteria;
- (b) for determining the concentration of residual disinfectant; and
- (c) for determining whether the specification in relation to the colony counts parameter is met.

Sampling: new sources

14.—(1) This regulation applies in relation to—

- (a) any source which has not previously been used for the supply of water by a water undertaker or supplementary licensee; and
- (b) any source which has been so used but not so used for a period of 6 months preceding the date on which the water undertaker or supplementary licensee proposes to supply water from it.

(2) Every water undertaker or supplementary licensee must take, or cause to be taken, in accordance with paragraph (3) and (4), such samples of that water as will enable it to establish —

- (a) whether water can be supplied from that source without contravening section 68(1) of the Act (duties of water undertakers and licensed water suppliers with respect to water quality)⁽¹⁾; and
 - (b) the treatment necessary to ensure that section 68(1) of the Act is complied with in relation to the supply of that water.
- (3) The samples must be taken or caused to be taken—
- (a) before the water undertaker or supplementary licensee supplies water from a source mentioned in paragraph (1)(a);
 - (b) as soon as is reasonably practicable after the water undertaker or supplementary licensee has begun to supply water from a source mentioned in paragraph (1)(b).
- (4) Samples must be taken—
- (a) in the case of a source mentioned in paragraph (1)(a), in respect of—
 - (i) the parameters listed in Schedules 1 and 2; and
 - (ii) any other element, organism or substance which, in the opinion of the water undertaker or supplementary licensee proposing to use the source, may cause the supply to contravene section 68(1) of the Act;
 - (b) in the case of a source mentioned in paragraph (1)(b), in respect of—
 - (i) the parameters listed in Table A in Schedule 1;
 - (ii) the conductivity, hydrogen ion and turbidity parameters; and
 - (iii) any other parameter as regards which the water undertaker or supplementary licensee proposing to use the source is of the opinion that its concentration or value is likely to have altered since the last occasion on which water from that source was analysed.
- (5) Unless the conditions in paragraph (6) are satisfied, a water undertaker or supplementary licensee must not supply water from a source mentioned in paragraph (1)(a) for regulation 4(1) purposes until 1 month has passed following the day on which the water undertaker or supplementary licensee complied with regulation 28(1) with respect to that source.
- (6) The conditions are that the water undertaker or supplementary licensee—
- (a) must supply water from the source as a matter of urgency in order to prevent an unexpected interruption in piped supply to consumers; and
 - (b) before the supply is made, has carried out a risk assessment under regulation 27 specifically with respect to the source.
- (7) For the purposes of paragraph (6)(b), regulation 27 will apply to supplies made as a matter of urgency as if “treatment works” includes a source from which untreated water is supplied.

Collection and analysis of samples

15.—(1) Every water undertaker or supplementary licensee must secure, so far as reasonably practicable, that when it takes, handles, transports, stores or analyses any sample required to be taken for the purposes of Part 4 or this Part, or causes any such sample to be taken, handled, transported, stored or analysed, it complies with the appropriate requirements.

(2) In this regulation, “the appropriate requirements” means such of the following requirements as are applicable—

- (a) the sample is representative of the quality of the water at the time of sampling;
- (b) the person taking a sample is subject to a system of quality control to an appropriate standard;
- (c) the sample is not contaminated when being taken;
- (d) the sample is kept at such a temperature and in such conditions as secure that there is no material alteration of the concentration or value for the measurement or observation of which the sample is intended;

(1) Section 68(1) was amended by paragraph 18 of Schedule 8 to the Water Act 2003.

- (e) the sample is analysed, whether at the time and place it is taken or as soon as reasonably practicable after it has been taken—
 - (i) by or under the supervision of a person who is competent to perform that task; and
 - (ii) with the use of such equipment as is suitable for the purpose;
 - (f) the collection and transportation of samples, or measurements recorded by continuous monitoring shall be subject to a system of quality control to an appropriate standard checked from time to time by a suitably accredited body.
- (3) Every water undertaker or wholesale licensee must secure that a suitably accredited body from time to time checks its compliance with the appropriate requirements.
- (4) Additionally, any person involved in seeking to discharge the obligation described in paragraph (1) must ensure that—
- (a) the methods of analysis used by that person for the purposes of monitoring and demonstrating compliance with this Part are validated and documented in accordance with European standard EN ISO/IEC 17025 entitled “*General requirements for the competence of testing and calibration laboratories*”(1) or other equivalent standards accepted at international level; and
 - (b) that person applies quality management system practices in accordance with European standard EN ISO/IEC 17025 or other equivalent standards accepted at international level.
- (5) Every water undertaker or supplementary licensee must maintain such records as are sufficient to enable it to establish, in relation to each sample taken for the purposes of Part 4 or this Part, that such of the appropriate requirements as are applicable to that sample have been satisfied.
- (6) Subject to paragraph (7), for the purpose of establishing, within acceptable limits of deviation and detection, whether the sample contains concentrations or values which contravene the prescribed concentrations or values, or exceed the specifications for indicator parameters—
- (a) the method of analysis specified in column 2 of Table A1 in Schedule 5 must be used for the parameter specified in relation to that method in column 1;
 - (b) the method of analysis in respect of the parameters listed in column 1 of Table A3 in Schedule 5 must be capable of measuring concentrations equal to the parametric value with a limit of quantification of 30% or less and an uncertainty of measurement as specified in column 2 of that Table and the result must be expressed—
 - (i) using at least the same number of significant figures as the parametric value; and
 - (ii) in the same units laid down in these Regulations; and
 - (c) the method of analysis used for the odour and taste parameters (items 5 and 7 in Part 2 of Table B in Schedule 1) must be capable, at the time of use, of measuring values equal to the parametric value with a precision or uncertainty of measurement of 1 dilution number at 25°C.
- (7) The Welsh Ministers may, on the application of any person, authorise a method of analysis other than that specified in paragraph (6)(a) (“the prescribed method”).
- (8) An application for the purposes of paragraph (7) must be made in writing and must be accompanied by—
- (a) a description of the method of analysis; and
 - (b) the results of the tests carried out to demonstrate the reliability of that method and its equivalence to the prescribed method.
- (9) The Welsh Ministers must not authorise the use of the method proposed in an application under paragraph (7) unless they are satisfied that the results obtained by the use of that method are at least as reliable as those produced by the use of the prescribed method.
- (10) An authorisation under paragraph (7) may be subject to such conditions as the Welsh Ministers consider appropriate.

(1) This standard was approved by the European Committee for Standardization (CEN) on 10 November 2017. Under reference BS EN ISO/IEC 17025:2017, it is published as a UK standard by the British Standards Institution (ISBN 0 580 46330 3).

(11) The Welsh Ministers may at any time, by notice in writing served on the water undertaker or supplementary licensee to which an authorisation under paragraph (7) has been given, revoke the authorisation, but any such notice must be served no later than 3 months before the date on which the revocation is stated to take effect.

Collection and analysis of samples: transitional provision

16.—(1) Before 23:59 on 31 December 2019 a water undertaker or supplementary licensee may, in respect of any parameter specified in column 1 of Table A2 in Schedule 5, apply the method of analysis in paragraph (2) in place of the method of analysis in regulation 15(6)(b).

(2) For the purpose of establishing, within acceptable limits of deviation and detection, whether the sample contains concentrations or values which contravene the prescribed concentrations or values, or exceed the specifications for indicator parameters the method of analysis used for a parameter specified in column 1 of Table A2 in Schedule 5 must be capable, at the time of use—

- (a) of measuring concentrations and values equal to the parametric value with the trueness and precision specified in relation to that parameter in columns 2 and 3 of that Table; and
- (b) of detecting the parameter at the limit of detection specified in relation to that parameter in column 4 of that Table.

(3) For the purposes of paragraph (3)—

“limit of detection” is to be calculated as—

- (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 within a batch of a blank sample;

“precision” is to be calculated as a measure of random error and may be expressed as the standard deviation (within and between batches) of the spread of results from the mean. A precision measurement of twice the relative standard deviation is acceptable. The term “precision” is further specified in international standard ISO 5725 entitled “Accuracy (trueness and precision) of measurement methods and results”(1) as amended by the technical corrigendum entitled “Accuracy (trueness and precision) of measurement methods and results - Part 1: General Principles and Definitions TECHNICAL CORRIGENDUM 1”(2);

“trueness” is to be calculated as a measure of systematic error, which is the difference between the mean value of the large number of repeated measurements and the true value. The term “trueness” is further specified in international standard ISO 5725 entitled “Accuracy (trueness and precision) of measurement methods and results”, as amended by the technical corrigendum entitled “Accuracy (trueness and precision) of measurement methods and results - Part 1: General Principles and Definitions TECHNICAL CORRIGENDUM 1”.

PART 6

Drinking Water Protected Areas

Drinking water abstraction points: monitoring sites

17.—(1) Every water undertaker or supplementary licensee must identify every point from which it abstracts water for supply for regulation 4(1) purposes.

(2) At every abstraction point, the relevant water undertaker or supplementary licensee must take, or cause to be taken, such samples, and analyse, or cause to be analysed, those samples for such properties, organisms and substances as it considers necessary in order to comply with regulations 26 to 28.

(1) This standard has been approved by the International Organization for Standardization (ISO). Under reference BS ISO 5725-1 to BS ISO 5725-6, these are published as UK standards by the British Standards Institution.

(2) ISO 5725-1:1994/Cor 1:1998 published on 2 May 1998.

(3) In relation to any abstraction point, the Welsh Ministers may, by notice served on the relevant water undertaker or supplementary licensee, require the relevant water undertaker or supplementary licensee—

- (a) to take, or cause to be taken, such numbers of samples of water per year as may be specified; and
- (b) to analyse, or cause to be analysed, those samples for such concentrations or values of such properties, organisms and substances, and at such frequencies, as may be specified.

(4) The Welsh Ministers may, by notice served on the relevant water undertaker or supplementary licensee, revoke or amend a notice served under paragraph (3).

(5) Every analysis required under—

- (a) paragraph (2), in relation to every body of surface water which provides more than 100 cubic metres of water per day as an average, must be carried out at no less than the following frequencies—
 - (i) 4 per year, where the population served by the body of surface water is less than 10,000 people;
 - (ii) 8 per year, where the population so served is 10,000 to 30,000 people; and
 - (iii) 12 per year, where the population so served is greater than 30,000 people; and
- (b) paragraphs (2) and (3) must be in accordance with such relevant standards as may be specified by the Welsh Ministers by notice served on the water undertaker or supplementary licensee.

(6) For the purposes of—

- (a) paragraphs (2) and (3)—

“abstraction point” means an abstraction point identified under paragraph (1); and

“relevant water undertaker or supplementary licensee” means the water undertaker or supplementary licensee which identified the abstraction point;

- (b) paragraph (3), “specified” means specified in the notice served under that paragraph; and

- (c) paragraph (5), “body of surface water” has the meaning given in Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy.

PART 7

Investigations, Authorisation of Departures and Remedial Action

Investigations: Schedule 1 parameters

18.—(1) A water undertaker or supplementary licensee must immediately take such steps as are necessary to identify the matters specified in paragraph (2) where it has reason to believe that water of a relevant description—

- (a) fails, or is likely to fail, to satisfy a requirement of regulation 4(2);
- (b) is to be regarded as unwholesome by virtue of regulation 4(4); or
- (c) if regulation 4(6) were ignored, would be regarded as unwholesome by virtue of regulation 4(5).

(2) The matters referred to in paragraph (1) are—

- (a) the cause and extent of the failure or, as the case may be, the apprehended failure;
- (b) the Schedule 1 parameters in respect of which the prescribed concentration or value has not been, or is unlikely to be, achieved; and
- (c) in relation to each parameter so identified, whether the failure, or apprehended failure, to achieve the prescribed concentration or value is attributable—
 - (i) to the domestic distribution system;
 - (ii) to the maintenance of that system; or
 - (iii) to neither of those matters.

(3) Where a departure has been authorised under this Part—

- (a) paragraph (1) will apply only in respect of the Schedule 1 parameters (if any) that are not specified in the authorisation; and
 - (b) every water undertaker or supplementary licensee which has reason to believe that water of a relevant description fails, or is likely to fail, to satisfy the concentration or value required by the authorisation in relation to any Schedule 1 parameter, must immediately take such steps as are necessary to identify the matters specified in paragraph (4).
- (4) The matters referred to in paragraph (3) are—
- (a) the cause and extent of the failure or, as the case may be, the apprehended failure;
 - (b) the Schedule 1 parameters in respect of which the required concentration or value has not been, or is unlikely to be, achieved; and
 - (c) in relation to each parameter so identified, whether the failure, or apprehended failure, to achieve that concentration or value is attributable—
 - (i) to the domestic distribution system;
 - (ii) to the maintenance of that system; or
 - (iii) to neither of those matters.
- (5) As soon as possible after the matters specified in paragraph (2) or (4), as the case may be, have been identified, the water undertaker or supplementary licensee must—
- (a) notify the Welsh Ministers—
 - (i) of those matters;
 - (ii) whether it is its opinion that, in relation to each parameter identified in accordance with paragraph (2)(b) or (4)(b), a failure in respect of that parameter is likely to recur;
 - (iii) of the action (if any) taken by it in relation to a failure which is attributable to the domestic distribution system or the maintenance of that system; and
 - (b) send a copy of that notice to any other relevant supplier which uses the supply system for the purposes of supplying water to consumers who are likely to be affected by the failure.
- (6) Where the water undertaker or supplementary licensee has identified a failure attributable to the domestic distribution system or to the maintenance of such a system, it must, at the same time as notification is given under paragraph (5)—
- (a) by notice in writing—
 - (i) to those of its consumers who are likely to be affected by the failure; and
 - (ii) to any other relevant supplier which uses the supply system for the purposes of supplying water to consumers who are likely to be affected by the failure, inform them of the nature of the failure and provide details of the steps (if any) that, in its opinion, it is necessary or desirable for those consumers to take in the interests of their health; and
 - (b) send a copy of that notice to the Welsh Ministers and to each appropriate local authority.
- (7) A relevant supplier which receives a notice under paragraph (6)(a)(ii) must immediately send or cause to be sent a copy of that notice to those of its consumers who are likely to be affected by the failure.
- (8) A water undertaker or supplementary licensee which has complied with the requirements of paragraphs (5) and (6) need not, in respect of the same failure or apprehended failure, comply with the requirements of regulation 35(6)(a)(iv).
- (9) Where such a failure as is mentioned in paragraph (1) relates to the copper or lead parameter, the relevant supplier must, as soon as reasonably practicable after the occurrence, modify or replace such of its pipes and their associated fittings as it knows or has reason to believe have the potential for contributing to copper or lead in the water supplied to the premises, so as to eliminate that potential (whether or not the presence of copper or lead in those pipes contributed to the failure).

Investigations: indicator parameters

19.—(1) Where a water undertaker or supplementary licensee has reason to believe that water of a relevant description does not meet the specifications for indicator parameters set out in Schedule 2, it must immediately take such steps as are necessary to identify—

- (a) whether water of a relevant description does or does not meet the specifications;
- (b) the indicator parameters in respect of which the specifications are not met;
- (c) if the specification for the coliform bacteria or colony counts parameter (items 4 and 5 in Schedule 2) is not met, whether the inability to meet that specification is attributable—
 - (i) to the domestic distribution system;
 - (ii) to the maintenance of that system; or
 - (iii) to neither of those matters;
- (d) if the specification for the tritium parameter is not met, whether the inability to meet the specification is attributable to artificial radionuclides.

(2) As soon as possible after the matters specified in paragraph (1) have been identified, the water undertaker or supplementary licensee must—

- (a) notify the Welsh Ministers—
 - (i) of those matters;
 - (ii) whether it is its opinion that, in relation to each parameter identified in accordance with paragraph (1)(b), a recurrence of the inability to meet the specification in respect of that parameter is likely; and
- (b) send a copy of that notice to any other relevant supplier which uses the supply system for the purposes of supplying water to consumers who are likely to be affected by the failure.

(3) Where, in a case to which paragraph (1)(c) applies, the inability to meet the specification has been identified as attributable to the domestic distribution system or to the maintenance of that system, the water undertaker or supplementary licensee must, at the same time as notification is given under paragraph (2)—

- (a) by notice in writing—
 - (i) to those of its consumers who are likely to be affected by the failure; and
 - (ii) to any other relevant supplier which uses the supply system for the purposes of supplying water to consumers who are likely to be affected by the failure, inform them of the nature of the failure and provide details of the steps (if any) that, in its opinion, it is necessary or desirable for those consumers to take in the interests of their health; and
- (b) send a copy of that notice to the Welsh Ministers and to each appropriate local authority.

(4) A relevant supplier which receives a notice under paragraph (3)(a)(ii) must immediately send or cause to be sent a copy of that notice to those of its consumers who are likely to be affected by the failure.

Action by the Welsh Ministers

20.—(1) Where—

- (a) a notification given in accordance with paragraph (6) of regulation 18 in the circumstances mentioned in paragraph (1) of that regulation (including that paragraph as read with paragraph (4)(a) of that regulation) discloses—
 - (i) a failure in respect of a parameter specified in Table B in Schedule 1, and
 - (ii) that the failure is not attributable to the domestic distribution system or the maintenance of that system, and
- (b) it appears to the Welsh Ministers that the failure is not trivial and is likely to recur,

the Welsh Ministers may, by notice in writing to any relevant supplier which uses the supply system for the purposes of supplying water to consumers in respect of which the notification was given, require that relevant supplier to seek a departure in accordance with regulation 22.

(2) The exercise by the Welsh Ministers of the power conferred by paragraph (1) will not preclude the exercise by the Welsh Ministers of the power conferred by section 18 of the Act (orders for securing compliance with certain provisions)(1).

(3) Where—

- (a) a notification given in accordance with regulation 18(5) in the circumstances mentioned in regulation 18(3)(b) discloses—
 - (i) a failure in relation to any parameter specified in Table B in Schedule 1, and
 - (ii) that the failure is not attributable to the domestic distribution system or the maintenance of that system, and
- (b) it appears to the Welsh Ministers that the failure in respect of that parameter is not trivial and is likely to recur,

the Welsh Ministers must consider whether to vary the terms of an authorisation under regulation 22.

(4) Where—

- (a) a notification given in accordance with regulation 19(2) discloses an inability to meet the specification applicable to an indicator parameter, and
- (b) the Welsh Ministers consider that the inability poses a potential danger to human health,

the Welsh Ministers must, by notice in writing to any relevant supplier which uses the supply system for the purposes of supplying water to consumers in respect of which the notification was given, require that relevant supplier to take such steps as may be determined by the Welsh Ministers and specified in the notice.

(5) A relevant supplier to whom a notice under paragraph (4) has been given must take the steps specified in the notice

Failure attributable to domestic distribution system where water is supplied to the public

21.—(1) Paragraph (3) applies where the Welsh Ministers consider that the failure (or, in the case of regulation 18, apprehended failure) disclosed by a notification under regulation 18(5) or regulation 19(2)—

- (a) is attributable to the domestic distribution system, or the maintenance of that system, in premises where water supplied for regulation 4(1) purposes is made available for use by the members of the public, including schools within the meaning of the Education Act 1996(2), hospitals and restaurants;
- (b) is not trivial and is likely to recur; and
- (c) in the case of a notification given under regulation 19(2), poses a potential danger to human health.

(2) References in this regulation to “failure” are references to a failure or apprehended failure of the type referred to in paragraph (1).

(3) Subject to paragraph (7), the Welsh Ministers must as soon as possible, serve a notice in writing on—

- (a) the water undertaker that supplies water to the premises, or
- (b) the water undertaker whose supply system is used for the purpose of a water supply licensee making a supply of water to the premises,

requiring it to exercise the power conferred by section 75(2) of the Act (power to prevent damage and to take steps to prevent contamination, waste etc.)(3) in respect of the failure.

(4) The provisions of section 75(2) to (12) of the Act apply in relation to the exercise of the power in section 75(2) in pursuance of a notice served under paragraph (3), subject to the modifications in paragraph (5).

(5) Those modifications are—

(1) Section 18 was amended by sections 36(2) and 49(2) of, and paragraph 4 of Schedule 8 to, the Water Act 2003, and by paragraph 26 of Schedule 7 to the Water Act 2014.
 (2) 1996 c.56.
 (3) Section 75 was amended by paragraph 24 of Schedule 8 to the Water Act 2003 and paragraph 72 of Schedule 7 to the Water Act 2014.

- (a) subsections (2)(b) and (4) are to be read as if any reference to “damage, contamination, waste, misuse or undue consumption” were a reference to the failure.
- (b) subsection (9) is to be read as if for the words from “the water undertaker shall have power” to the end of paragraph (b) there were substituted—

“the water undertaker—

- (a) must take those steps itself; and
- (b) subject to subsection (10) may recover any expenses reasonably incurred by the undertaker in taking those steps from the person on whom the notice was served.

(6) Where the water undertaker exercises the power in section 75(2) of the Act pursuant to a notice served by the Welsh Ministers under paragraph (3) it must inform by notice in writing any of its other consumers who are likely to be affected, of the steps it has taken, and that notice must include a copy of any notice that it has served.

(7) Where the Welsh Ministers consider that the failure (or any aspect of it) is attributable to factors arising from the further distribution by a person other than a water undertaker or water supply licensee of water supplied by a water undertaker or water supply licensee, the Welsh Ministers—

- (a) must not serve a notice under paragraph (3) in respect of that failure or aspect of it; and
- (b) if the Welsh Ministers consider that the local authority needs information or assistance from the water undertaker or water supply licensee in order to be able to carry out its duties under regulation 17 (provision of information) or 18 (investigation) of the Private Water Supplies (Wales) Regulations 2017(1), the Welsh Ministers must serve a notice on the water undertaker or water supply licensee requiring it to provide such information or assistance to the local authority as is specified in the notice.

(8) The water undertaker or water supply licensee on which a notice under this regulation has been served must take the steps specified in the notice as soon as possible.

Authorisation of temporary supply of water that is not wholesome

22.—(1) Subject to paragraph (2), the Welsh Ministers may, upon the written application of a relevant supplier, authorise in accordance with regulation 23 a departure from the provisions of Part 3 of these Regulations in so far as they relate to—

- (a) a parameter specified in Table B in Schedule 1; and
- (b) the supply of water by a relevant supplier in any of the water supply zones which it uses for the purposes of supplying water to consumers.

(2) The Welsh Ministers must not authorise a departure under paragraph (1) unless they are satisfied—

- (a) that the authorisation is necessary to maintain in that zone a supply of water for regulation 4(1) purposes;
- (b) that a supply of water for those purposes cannot be maintained in that zone by any other reasonable means; and
- (c) that the supply of water in accordance with the authorisation does not constitute a potential danger to human health.

(3) Every water undertaker or supplementary licensee must provide with its application—

- (a) a statement—
 - (i) of the grounds on which the authorisation is sought;
 - (ii) of the water supply zone in respect of which the authorisation is sought;
 - (iii) of the parameters in respect of which the prescribed concentration or value cannot be met;

(1) S.I. 2017/1041 (W. 270).

- (iv) in respect of each parameter to which paragraph (iii) applies, of the results of the analysis of the samples taken in the water supply zone in question during the 12 months immediately preceding the first day on which the prescribed concentration or value could not be met;
- (v) in respect of each parameter to which paragraph (iii) applies, of the results of the analysis of the samples (if any) taken in the water supply zone in question between the first day on which the prescribed concentration or value could not be met and the date of the application;
- (vi) of the average daily quantity of water supplied to that zone or, if that quantity cannot readily be ascertained, of the average daily quantity of water supplied from the treatment works that supplies water to that zone;
- (vii) of the estimated population of that zone;
- (viii) as to whether, if a departure were authorised in the terms sought, any relevant food-production undertaking would be affected;
- (ix) of the period for which the authorisation is sought; and
- (x) of the reasons why the supply cannot be maintained by other reasonable means;
- (b) a scheme for monitoring the quality of water supplied in the zone during the period for which the authorisation is sought; and
- (c) a summary of the steps that it proposes to take, either alone or together with other relevant suppliers, in order to secure that the supply fully satisfies the requirements of Part 3, including—
 - (i) a timetable for the work;
 - (ii) an estimate of the cost of the work; and
 - (iii) provisions for reviewing the progress of the work and for reporting the result of the review to the Welsh Ministers.

(4) At the same time as it makes an application for an authorisation under paragraph (1), the water undertaker or supplementary licensee must serve a copy of the application and of the statement, scheme and summary referred to in paragraph (3) on—

- (a) every appropriate local authority;
- (b) the Public Health Wales National Health Service Trust;
- (c) where the water supply zone is wholly or partly in England, Public Health England; and
- (d) the Council⁽¹⁾.

(5) A body on whom documents have been served in accordance with paragraph (4) may make representations to the Welsh Ministers in connection with the application; and any such representations must be made not later than the end of the period of 30 days beginning with the date on which the application for the authorisation is made.

Authorisations: terms and conditions

23.—(1) Subject to paragraph (2), a departure may be authorised under regulation 22 for such period as is in the Welsh Ministers’ opinion reasonably required for securing a supply of water for regulation 4(1) purposes that fully satisfies the requirements of Part 3 (“the departure period”).

(2) No departure period may exceed 3 years.

(3) Subject to paragraph (4), an authorisation under regulation 22—

- (a) must specify—
 - (i) the grounds on which it is granted;
 - (ii) every water supply zone in respect of which it is granted;
 - (iii) the extent to which a departure from the prescribed concentration or value of any parameter is authorised;

(1) See section 219(1) of the Act (as amended by section 56 of, and paragraph 27(7)(b) of Schedule 7 to, the Water Act 2014) which defines “the Council” as the Consumer Council for Water.

- (iv) in respect of each parameter to which paragraph (iii) applies, the results of the analysis of the samples taken in each water supply zone in question during the 12 months immediately preceding the first day on which the prescribed concentration or value could not be met;
 - (v) in respect of each parameter to which paragraph (iii) applies, the results of the analysis of the samples (if any) taken in each water supply zone in question between the first day on which the prescribed concentration or value could not be met and the date of the application;
 - (vi) the average daily quantity of water supplied from each of those zones or, if that quantity cannot readily be ascertained, the average daily quantity of water supplied from the treatment works that supplies water to that zone;
 - (vii) the estimated population of each of those zones;
 - (viii) whether or not any relevant food-production undertaking would be affected; and
 - (ix) the departure period;
- (b) must require the implementation of a scheme for monitoring the quality of water supplied in each of those zones during the departure period (which may be, but need not be, the scheme submitted in accordance with regulation 22(3)(b));
 - (c) must require the carrying out of the steps which, in its opinion, are reasonably required in order to secure that the supply fully satisfies the requirements of Part 3 (whether or not the steps are those proposed in the summary submitted in accordance with regulation 22(3)(c));
 - (d) must specify, in relation to those steps—
 - (i) the timetable for the work;
 - (ii) an estimate of the cost of the work; and
 - (iii) provisions for reviewing the progress of the work and for reporting to it the result of the review; and
 - (e) must require a relevant supplier to provide to the relevant population advice as to the measures (if any) that it would be advisable for them to take in the interests of their health for the whole or any part of the departure period.

(4) In paragraph (3)(e), “relevant population” means the population within the water supply zones to which the authorisation applies and, in particular, those groups of that population for which the supply of water in accordance with the authorisation could present a special risk.

(5) Where paragraph (6) applies, the particulars to be specified in the authorisation are those required by paragraph (3)(a)(iii) and (ix), and paragraph (3)(b) to (e) does not apply.

(6) This paragraph applies where the Welsh Ministers are of the opinion that—

- (a) the extent of the contravention of the requirements of Part 3 as respects any parameter is trivial; and
- (b) the prescribed concentration or value as respects that parameter is likely to be achieved within the period of 30 days beginning with the day on which the prescribed concentration or value in respect of that parameter was contravened.

(7) Where it appears to the Welsh Ministers that a supply of water that fully satisfies the requirements of Part 3 cannot be restored by the end of the departure period, they may authorise a further departure.

(8) Paragraphs (1) to (6) will apply to a further departure authorised under paragraph (7) as they apply to a departure authorised under regulation 22.

(9) Where it appears to the Welsh Ministers that a supply of water that fully satisfies the requirements of Part 3 cannot be restored by the end of the departure period relevant to an authorisation under paragraph (5), they may, in accordance with Article 9(2) of Council Directive 98/83/EEC on the quality of water for human consumption⁽¹⁾, authorise a third departure.

(10) Paragraph (3) applies to a third departure authorised under paragraph (9) as it applies to a departure authorised under regulation 22, but with the substitution for the words “Subject to paragraph (5)” of the words “Subject to any direction of the European Commission”.

(1) OJ No L 330, 5.12.1998, p 32, as last amended by Commission Directive (EU) 2015/1787 (OJ No L 260, 7.10.2015, p 6).

- (11) An authorisation under regulation 22 or this regulation may be limited to water supplied—
- (a) from particular sources or classes of source;
 - (b) to particular water supply zones or to zones of particular descriptions.

Publicity for authorisations

24.—(1) As soon as reasonably practicable after a departure has been authorised under regulation 22 or 23, the specified relevant suppliers must—

- (a) separately publish, by making accessible, free of charge, on their websites via a hyperlink maintained on their respective homepages for at least 14 days—
 - (i) except in a case to which paragraph (4) of regulation 23 applies, a notice containing a statement of the matters specified in paragraph (3)(a)(ii), (iii), (viii) and (ix) of that regulation; and
 - (ii) in a case to which paragraph (4) of regulation 23 applies, a notice containing a statement of the matters specified in paragraph (3)(a)(ii), (iii) and (ix) of that regulation; and
 - (b) jointly give such other public notice of the authorisation and of its terms and conditions as the Welsh Ministers may, by notice served on the specified relevant suppliers, reasonably require.
- (2) In this regulation “specified relevant suppliers” means relevant suppliers—
- (a) who use the same water supply zone for the purposes of supplying water to consumers; and
 - (b) for the purposes of that supply, rely on an authorised departure relating to the same facts.

Revocation and modification of authorisations

25.—(1) Subject to paragraphs (2) and (4), the Welsh Ministers may at any time modify or revoke an authorisation under regulation 22.

(2) Subject to paragraph (3) the Welsh Ministers must not revoke or modify an authorisation under regulation 22 without giving at least 6 months’ notice in writing of their intention to do so to—

- (a) the relevant supplier to which the authorisation relates;
- (b) any other relevant supplier which, for the purposes of supplying water to consumers, uses the water supply zone in respect of which the authorised departure has been given;
- (c) every appropriate local authority;
- (d) the Public Health Wales National Health Service Trust;
- (e) where the authorisation relates to a water supply zone which is wholly or partly in England, Public Health England; and
- (f) the Council.

(3) The Welsh Ministers may revoke or vary an authorisation under regulation 22 without notice if it appears to the Welsh Ministers that immediate revocation or modification is required in the interests of public health.

(4) A relevant supplier on whose application a departure has been authorised under this Part must notify the Welsh Ministers as soon as the circumstances which gave rise to the application cease to exist; and the Welsh Ministers will thereupon revoke the authorisation without the need for prior notice.

PART 8

Water Treatment

Disinfection and other treatment arrangements

26.—(1) Unless the conditions in paragraph (5) are satisfied, before supplying water for regulation 4(1) purposes, a water undertaker or supplementary licensee must—

- (a) disinfect the water; and

- (b) where necessary, subject the water to sufficient preliminary treatment to prepare it for disinfection.
- (2) A water undertaker or supplementary licensee must—
- (a) design, operate and maintain the disinfection process so as to keep the presence of disinfection by-products as low as possible without compromising the effectiveness of the disinfection; and
 - (b) verify the effectiveness of the disinfection process.
- (3) Paragraph (4) applies when any property, organism or substance is present in a water source at a level that may constitute a potential danger to human health.
- (4) Unless the conditions in paragraph (5) are satisfied, before supplying water for regulation 4(1) purposes using water from any source, a water undertaker or supplementary licensee must design and continuously operate an adequate treatment process for water from the source.
- (5) The conditions are that the water undertaker or supplementary licensee—
- (a) must supply water from the treatment works as a matter of urgency in order to prevent an unexpected interruption in piped supply to customers; and
 - (b) before the supply is made, has taken all necessary steps to inform consumers that the water is not disinfected or adequately treated.
- (6) For the purposes of this regulation—
- (a) “adequate treatment process” means a process of blending or purification treatment which—
 - (i) Removes; or
 - (ii) renders harmless the value or concentration of, any property of, organism or substance in, water, so that supplies do not constitute a potential danger to human health;
 - (b) “sufficient preliminary treatment” means the treatment necessary—
 - (i) to remove, or to reduce the value or concentration of, any property or substance which would interfere with disinfection; and
 - (ii) to reduce turbidity to less than one NTU; and
 - (c) water is supplied for regulation 4(1) purposes when it leaves a treatment works.

Risk assessment

27.—(1) This regulation applies to every treatment works and supply system from which water is supplied for regulation 4(1) purposes.

(2) Every water undertaker or supplementary licensee must carry out a risk assessment of each of its treatment works and connected supply system in order to establish whether there is a significant risk of supplying water from those works or supply system that would constitute a potential danger to human health or is likely to be unwholesome.

(3) Every water undertaker or supplementary licensee must keep its risk assessments under continuous review.

(4) The Welsh Ministers may by notice served on a water undertaker or supplementary licensee, require a risk assessment or review to be carried out by a date specified in the notice.

(5) Where a water undertaker or supplementary licensee becomes aware of any factors which make it likely that a risk assessment under this regulation would establish that there is a significant risk of supplying water that would constitute a potential danger to human health, or that is likely to be unwholesome, it must serve a notice on the Welsh Ministers specifying the relevant factors.

Procedure following risk assessment and prohibition of supply

28.—(1) As soon as reasonably practicable after a water undertaker or supplementary licensee has carried out a risk assessment or review of such assessment under regulation 27, it must submit to the Welsh Ministers a report of the assessment or review.

(2) The report must contain—

- (a) a description of the methods used to carry out the assessment or review;

- (b) where the assessment or review establishes that there is no significant risk of supplying water that could constitute a potential danger to human health or could be unwholesome, a statement confirming this; and
 - (c) where the assessment or review establishes that measures have been taken to remove a significant risk of supplying water that could constitute a potential danger to human health or could be unwholesome—
 - (i) monitoring data which verifies this; and
 - (ii) details of those measures.
- (3) Where the assessment or review establishes that there is a significant risk of supplying water that could constitute a potential danger to human health or could be unwholesome, the report must—
- (a) contain a full explanation including details of every property, organism or substance that has been identified as contributing to the risk; and
 - (b) specify the measures that the water undertaker or supplementary licensee—
 - (i) has made operational as at the date of the report; and
 - (ii) intends to make operational, to mitigate the risk.
- (4) Where the Welsh Ministers have received a report which states that there is or has been a significant risk of supplying water that could constitute a potential danger to human health or could be unwholesome, they may, by notice served on the water undertaker or supplementary licensee, require the water undertaker or supplementary licensee—
- (a) to maintain such specified measures for such period of time as the Welsh Ministers consider appropriate to mitigate the risk;
 - (b) to review, revise or make operational such specified measures by such date as the Welsh Ministers consider appropriate to mitigate the risk;
 - (c) to audit whether the measures have been effective by such means as may be specified;
 - (d) not to supply water for regulation 4(1) purposes from specified treatment works or supply systems, or not to so supply unless specified conditions are satisfied; and
 - (e) to give the Welsh Ministers such information as they may require to monitor progress towards mitigation of that risk.
- (5) In paragraph (4), “specified” means specified in the notice served under that paragraph.
- (6) The Welsh Ministers may, by notice served on the relevant water undertaker or supplementary licensee, revoke or amend a notice served under paragraph (4).

Water treatment to minimise contamination from pipes

29.—(1) Paragraph (2) applies where there is a risk (“the prescribed risk”) that water supplied by a relevant supplier would, for the reason mentioned in paragraph (3), after leaving the relevant supplier’s pipes—

- (a) contain a concentration of copper in excess of 2 mg/litre; or
- (b) contain a concentration of lead in excess of 10 µg/litre.

(2) Every water undertaker or supplementary licensee which introduces water into the supply system used by the relevant supplier must, subject to paragraph (4), treat the water in such a way as will, in its opinion, eliminate the prescribed risk or reduce it to a minimum.

(3) The reason referred to in paragraph (1) is the presence in the water of a concentration of copper or lead which is attributable to the fact that copper or lead is the major component of such a pipe as is mentioned in section 68(3)(a)(1) of the Act, or its associated fittings.

(4) Paragraph (1) will not require a water undertaker or supplementary licensee to treat water—

- (a) if the treatment is unlikely to achieve a significant reduction in the concentration of copper or lead; or

(1) Section 68(3) was amended by paragraph 18(5) of Schedule 8 to the Water Act 2003.

- (b) if treatment is not reasonably practicable.

Replacement of lead pipes

30.—(1) The relevant supplier must modify or replace its part of a pipe where a relevant supplier—

- (a) has received from the owner of premises to which water is so supplied notice in writing—
 - (i) of the owner’s intention to replace so much of the pipe as belongs to him; and
 - (ii) of his desire that the relevant supplier replaces the remainder of the pipe; and
- (b) has reason to believe that water supplied by it for regulation 4(1) purposes from a pipe to which paragraph (2) applies contains, at the consumer’s tap, a concentration of lead which exceeds 10 µg/l.

(2) This paragraph applies to a pipe—

- (a) of which the major component is lead;
- (b) which is subject to water pressure from a water main or would be so subject but for the closing of some valve; and
- (c) of which part belongs to a relevant supplier and of which the remainder belongs to the owner of any premises to which the relevant supplier supplies water for regulation 4(1) purposes.

Application and introduction of substances and products

31.—(1) Subject to paragraph (2), a water undertaker or supplementary licensee must not apply any substance or product to, or introduce any substance or product into, water which is to be supplied for regulation 4(1) purposes unless one of the requirements of paragraph (4) is satisfied.

(2) A substance or product which, at the time of its application or introduction—

- (a) bears an appropriate CE marking in accordance with the Constructions Products Regulation, or
 - (b) conforms to an appropriate British Standard or some other appropriate standard of an EEA state or Turkey which provides an equivalent level of protection and performance,
- may be applied or introduced, notwithstanding that none of the requirements of paragraph (4) are satisfied.

(3) Paragraph (2) applies only if such an application or introduction complies with—

- (a) such conditions of use restricting the dosing concentration as are for the time being in force in relation to such substances and products pursuant to a determination of the Welsh Ministers by an instrument in writing;
- (b) such other requirements, within the meaning of the Technical Standards Directive, in relation to such substances and products, as have been communicated to the European Commission in the form of a draft technical regulation in accordance with Article 8 of that Directive, and whose adoption by a Member State has also been communicated to the European Commission.

(4) The requirements of this paragraph are—

- (a) that the Welsh Ministers have for the time being approved the application or introduction of that substance or product and it is applied or introduced in accordance with any conditions attaching to that approval;
- (b) that the Welsh Ministers are satisfied that the substance or product either alone or in combination with any other substance or product in the water is unlikely to affect adversely the quality of the water supplied; and
- (c) that the substance or product is to be applied or introduced solely for the purposes of testing or research, and the water undertaker or supplementary licensee has given to the Welsh Ministers not less than 3 months’ notice in writing of its intention so to apply or introduce the substance or product.

(5) An application for such an approval as is mentioned in paragraph (4)(a) may be made by any person.

(6) If the Welsh Ministers decide to issue an approval under paragraph (4)(a), they may include in the approval such conditions as it considers appropriate and, subject to paragraph (10), may at any time revoke or vary any approval it has previously given.

(7) Where substances or products are applied or introduced in any case in which the requirement mentioned in paragraph (4)(c) is satisfied, their application or introduction will be discontinued within 12 months of the date on which they were first applied or introduced or, if the Welsh Ministers by notice given in writing to the water undertaker or supplementary licensee so directs, within such other period (whether longer or shorter) as may be specified in the notice.

(8) The Welsh Ministers may, by notice given in writing to any water undertaker or supplementary licensee, prohibit the water undertaker or supplementary licensee from applying to, or introducing into, water intended to be supplied for regulation 4(1) purposes any substance or product which the water undertaker or supplementary licensee would otherwise be authorised to apply or introduce by virtue of—

- (a) paragraphs (1) and (4)(b) or (c); or
- (b) paragraph (2).

(9) A prohibition under paragraph (8) may be without limitation as to time or for such period as is specified in the notice.

(10) Subject to paragraph (11) the Welsh Ministers may—

- (a) revoke by an instrument in writing any approval given by it under paragraph (4)(a);
- (b) modify any such approval by an instrument in writing by including conditions or varying existing conditions;
- (c) give any such notice as is mentioned in paragraph (8);

(11) Unless the Welsh Ministers are satisfied that it is necessary to do so in the interests of public health without notice, the Welsh Ministers must not do any of those things without giving all such persons as are, in the opinion of the Welsh Ministers, likely to be affected by the revocation or modification of the approval or by the giving of the notice at least 6 months' notice in writing of its intention.

(12) Notwithstanding paragraph (11), the Welsh Ministers must give immediate notice to all persons likely to be affected by the revocation or variation of an instrument mentioned in paragraph (10)(a) or (b).

(13) At least once in each year, the Welsh Ministers must issue a list of all the substances and products, with particulars of the action taken, in relation to which—

- (a) an approval under paragraph (4)(a) has been granted or refused;
- (b) such an approval has been revoked or modified; and
- (c) a notice has been given under paragraph (8).

(14) The Welsh Ministers may—

- (a) by notice served on the person who makes an application for approval under paragraph (4)(a), require the person to pay the Welsh Ministers a charge which reflects the administrative expenses incurred or likely to be incurred by the Welsh Ministers in connection with the application; and
- (b) in determining the amount of any such charge, adopt such methods and principles for its calculation as appear to the Welsh Ministers to be appropriate.

(15) In this regulation—

- (a) “EEA state” means—
 - (i) a Member State of the EU; or
 - (ii) any other State that is a party to the EEA agreement;
- (b) “EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2 May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17 March 1993, as modified or supplemented from time to time;

- (c) “the Construction Products Regulation” means Regulation (EU) No 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products⁽¹⁾;
- (d) “the Technical Standards Directive” means Directive (EU) 2015/1535 of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services⁽²⁾.

Use of processes

32.—(1) The Welsh Ministers may at any time by notice in writing given to a water undertaker or supplementary licensee require the water undertaker or supplementary licensee to make an application to it for approval of the use of any process; and may prohibit the water undertaker or supplementary licensee for such period as may be specified in the notice from using any such process in connection with the supply by the water undertaker or supplementary licensee of water for regulation 4(1) purposes.

(2) The Welsh Ministers may refuse the application or impose on any approval given for the purposes of this regulation such conditions as they think fit and, subject to paragraph (3), may at any time by notice in writing to the water undertaker or supplementary licensee revoke an approval so given or modify or revoke any condition imposed by virtue of this paragraph.

(3) Subject to paragraph (4), unless the Welsh Ministers have given to the water undertaker or supplementary licensee at least 6 months’ notice in writing of the Welsh Ministers’ intention to revoke, vary or prohibit, as the case may be, the Welsh Ministers must not—

- (a) revoke any approval given for the purposes of this regulation;
- (b) modify any condition imposed by virtue of paragraph (2); or
- (c) prohibit a water undertaker or supplementary licensee from using any process.

(4) Paragraph (3) does not apply in any case in which the Welsh Ministers are of the opinion that the immediate revocation, modification or prohibition is necessary in the interests of public health.

(5) Regulation 31(13) applies for the purposes of this regulation as if—

- (a) for the reference to a substance or product there were substituted a reference to a process; and
- (b) for the reference to paragraph (4)(a) and paragraph (8) there were substituted a reference to this regulation and paragraph (1) of this regulation respectively.

Offences

33.—(1) A water undertaker or supplementary licensee which contravenes regulation 26(1) or (4) or the terms of a notice served under regulation 28(4)(d) will be guilty of an offence and liable on summary conviction, or on conviction on indictment, to a fine.

(2) In any proceedings against a water undertaker or supplementary licensee for an offence under paragraph (1), it will be a defence for that water undertaker or supplementary licensee to show that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(3) A water undertaker or supplementary licensee which—

- (a) applies or introduces any substance or product in contravention of regulation 31(1) or a notice given under regulation 31(8), or
- (b) uses any process in contravention of a prohibition imposed under regulation 32(1) or without complying with a condition imposed by virtue of regulation 32(2),

will be guilty of an offence and liable on summary conviction, or on conviction on indictment, to a fine.

(4) If any person, in furnishing any information or making any application under regulation 31 or 32, makes any statement which he or she knows to be false in a material particular, or recklessly makes any

(1) OJ No L 88, 4.4.2011, p 5, as last amended by Commission Delegated Regulation (EU) No 574/2014 (OJ No L 159, 28.5.2014, p 41).

(2) OJ No L 241, 17.9.2015, p 1.

statement which is false in a material particular, that person is guilty of an offence and liable on summary conviction, or on conviction on indictment, to a fine.

(5) Proceedings for an offence under paragraph (4) will not be instituted except by or with the consent of the Welsh Ministers or the Director of Public Prosecutions.

PART 9

Records and Information

Maintenance of records

34.—(1) Every water undertaker or supplementary licensee must, in respect of each of the water supply zones which it uses for the purposes of supplying water to consumers, prepare and maintain a record containing—

- (a) the name of the zone;
- (b) the name of every water treatment works, service reservoir and other supply point from which water is supplied to premises within the zone;
- (c) an estimate of the population of the zone;
- (d) particulars of any departure authorised under Part 7 of these Regulations which applies to water supplied in the zone;
- (e) particulars of the action taken or required to be taken by the water undertaker or supplementary licensee to comply with—
 - (i) any enforcement order made under section 18 of the Act;
 - (ii) any departure authorised under Part 7; and
 - (iii) any notice under regulation 20(4);
- (f) particulars of the result of any analysis of samples taken in accordance with Part 4 of these Regulations or any of regulations 11 to 13, 17 and 28;
- (g) the results of any electronic monitoring where this is carried out in accordance with these Regulations;
- (h) particulars of all consumer contacts in relation to the discharge of duties under these Regulations; and
- (i) such other particulars as the water undertaker or supplementary licensee may determine.

(2) A retail licensee must, in respect of each of the water supply zones which it uses for the purposes of supplying water to consumers, prepare and maintain a record containing—

- (a) the name of the water supply zone;
- (b) particulars of any departure authorised under Part 7 of these Regulations which applies to water supplied in the zone;
- (c) particulars of the action taken or required to be taken by the retail licensee to comply with—
 - (i) any enforcement order made under section 18 of the Act;
 - (ii) any departure authorised under Part 7; and
 - (iii) any notice under regulation 20(4);
- (d) particulars of all consumer contacts in relation to the discharge of duties under these Regulations; and
- (e) such other particulars as the retail licensee may determine.

(3) A water undertaker or supplementary licensee must make entries in the record—

- (a) in respect of the matters mentioned in paragraph (1)(a) to (d) and (e)(ii) as soon as reasonably practicable and no later than 3 months after the day on which it first introduces water into a supply system for the purposes of supplying water to consumers;

- (b) in respect of the matters mentioned in paragraph (1)(e)(i) and (iii) within 28 days of the date of the order and notice respectively; and
 - (c) relating to the results of the analysis of samples within 28 days of the day on which the result is first known to the water undertaker or supplementary licensee.
- (4) A retail licensee must make—
- (a) initial entries in the record in respect of the matters mentioned in paragraph (2)(a), (b) and (c)(ii) no later than 3 months after the day on which it first uses a supply system for the purposes of supplying water to consumers; and
 - (b) entries in respect of the matters mentioned in paragraph (2)(c)(i) and (iii) within 28 days of the date of the order and notice respectively.
- (5) Without prejudice to paragraph (3), the relevant supplier must at least once in each year review and bring up to date the record required to be kept by paragraph (1) or paragraph (2) (as the case may be).
- (6) Nothing in this regulation will require a relevant supplier to retain a record—
- (a) of information mentioned in any of sub-paragraphs (a), (b) and (f) of paragraph (1) or in paragraph (2)(a) at any time more than 30 years after the date on which the information was first entered in the record;
 - (b) of information mentioned in any other sub-paragraph of paragraph (1) or paragraph (2) at any time more than 5 years after the date on which the information was first entered in the record.

Provision of information

35.—(1) Any person may request a relevant supplier to send to the person making the request a copy of any record maintained by the relevant supplier under regulation 34 and the relevant supplier must, within 7 days of the receipt of the request, send a copy of the record requested to the person who requested it.

- (2) A relevant supplier must comply with a request under paragraph (1)—
- (a) in the case of a request relating to a water supply zone, free of charge if the person receives a supply of water in the zone; or
 - (b) in any other case, on payment of such reasonable charge as the relevant supplier may determine.
- (3) Paragraph (1) does not oblige a relevant supplier to comply with a request which is vexatious.
- (4) Where a relevant supplier has previously complied with a request which was made by any person, paragraph (1) does not oblige it to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the subsequent request.
- (5) A water undertaker must include in, or append to, at least one of the accounts sent to each customer in any year a statement informing customers of their rights under paragraph (1).
- (6) As soon as possible after an event which, by reason of its effect or likely effect on the water supplied by a relevant supplier, gives rise or is likely to give rise to a significant risk to human health the relevant supplier must notify—
- (a) in every case—
 - (i) every appropriate local authority;
 - (ii) the Public Health Wales National Health Service Trust;
 - (iii) the Council; and
 - (iv) the Welsh Ministers; and
 - (b) in any case where the event gives rise or is likely to give rise to a significant risk to human health in England—
 - (i) Public Health England; and
 - (ii) the Secretary of State.

(7) Where a person has received a notification under paragraph (6), that person may require the relevant supplier to provide such further information relating to the event and its consequences as that person may reasonably require.

PART 10

Functions of Local Authorities in Relation to Water Quality

Application and interpretation of this Part

36.—(1) This Part applies to the performance by a local authority of their duty under section 77(1) of the Act (general functions of local authorities in relation to water quality) insofar as that duty relates to water supplies which are not private supplies.

(2) In this Part “specified relevant supplier”, in relation to a local authority, means—

- (a) a water undertaker any of whose water supply zones include an area which is situated within the area of that authority; or
- (b) a water supply licensee which uses any such water supply zones for the purposes of supplying water to consumers.

Duties of local authorities: supplementary provision

37.—(1) In performing their duty under section 77(1) of the Act, a local authority—

- (a) must make such arrangements with the specified relevant supplier as will secure that the authority is notified as mentioned in regulation 35(6)(a)(i); and
- (b) may take, or cause to be taken, and analyse, or cause to be analysed, by a person designated by them in writing, such samples of the water supplied to premises in their area as they may reasonably require.

(2) Regulation 15 applies to samples taken by virtue of paragraph (1) as it applies to samples taken for the purposes of Parts 4 and 5 of these Regulations, but regulation 15(1) is to be read as if for the words “water undertaker or supplementary licensee” there were to be substituted “local authority”.

PART 11

Enforcement

Contraventions by relevant suppliers

38. Any duty or requirement imposed by Parts 4 to 9 of these Regulations on a relevant supplier will be enforceable under section 18 of the Act by the Welsh Ministers or the Authority⁽¹⁾, whether or not the duty or requirement constitutes an offence.

PART 12

Miscellaneous

Transitional provisions

39.—(1) On the coming into force of these Regulations—

(1) See section 219(1) of the Act (as amended by section 101 of, and paragraph 27 of Schedule 7 to, the Water Act 2003) which defines “the Authority” as the Water Services Regulation Authority.

- (a) a notice given under regulation 6A(3) of the 2010 Regulations which had effect immediately before the coming into force of these Regulations is taken to be a notice given under regulation 6(13) of these Regulations;
- (b) an authorisation under regulation 8(1) or (3) of the 2010 Regulations is taken to be an authorisation given under regulation 8(2) or (4) respectively of these Regulations;
- (c) an authorisation given under regulation 16(7) of the 2010 Regulations which had effect immediately before the coming into force of these Regulations is taken to be an authorisation under regulation 15(7) of these Regulations;
- (d) a notice given under regulation 17(3), (4) or (5)(b) of the 2010 Regulations which had effect immediately before the coming into force of these Regulations is taken to be a notice given under regulation 17(3), (4) or (5)(b) respectively of these Regulations;
- (e) a notice given under regulation 20(1) or (4) of the 2010 Regulations which had effect immediately before the coming into force of these Regulations is taken to be a notice given under regulation 20(1) or (4) respectively of these Regulations;
- (f) a notice given under regulation 21(3) of the 2010 Regulations which had effect immediately before the coming into force of these Regulations is taken to be a notice given under regulation 21(3) of these Regulations;
- (g) an authorisation given under regulation 22(1) of the 2010 Regulations which had effect immediately before the coming into force of these Regulations is taken to be an authorisation given under regulation 22(1) of these Regulations;
- (h) any further authorisations given under regulation 23(5) and (7) of the 2010 Regulations which had effect immediately before the coming into force of these Regulations are taken to be further authorisations given under regulation 23(7) and (9) respectively of these Regulations;
- (i) a notice given under regulation 28(5) of the 2010 Regulations which had effect immediately before the coming into force of these Regulations is taken to be a notice given under regulation 27(4) of these Regulations;
- (j) a notice given under regulation 29(4) of the 2010 Regulations which had effect immediately before the coming into force of these Regulations is taken to be a notice given under regulation 28(4) of these Regulations;
- (k) an approval given under regulation 31(4)(a) of the 2010 Regulations which had effect immediately before the coming into force of these Regulations is taken to be an approval given under regulation 31(4)(a) of these Regulations;
- (l) a notice given under regulation 31(7) or (8) of the 2010 Regulations which had effect immediately before the coming into force of these Regulations is taken to be a notice given under regulation 31(7) or (8) respectively of these Regulations;
- (m) a notice given under regulation 32(1) of the 2010 Regulations which had effect immediately before the coming into force of these Regulations is taken to be a notice given under regulation 32(1) of these Regulations; and
- (n) an approval or notice given under regulation 32(2) of the 2010 Regulations which had effect immediately before the coming into force of these Regulations is taken to be an approval or notice respectively given under regulation 32(2) of these Regulations.

(2) Any variation from the standard number under the 2010 Regulations, as defined in regulation 9 of those Regulations, as in force immediately before the coming into force of these Regulations is to cease upon the coming into force of these Regulations.

(3) Table A2 in Schedule 5 remains in force until 23:59 on 31 December 2019 following which it is revoked for all purposes.

(4) Regulation 16 remains in force until 23:59 on 31 December 2019 following which it is revoked for all purposes.

Amendments and revocations

40.—(1) The Regulations specified in Table 1 in Schedule 6 are amended in accordance with the provisions of that Table.

(2) The Regulations specified in Table 2 in Schedule 6 are revoked to the extent specified in that Table.

Lesley Griffiths

Cabinet Secretary for Energy, Planning and Rural Affairs,
one of the Welsh Ministers

22 May 2018

SCHEDULE 1 Regulations 2, 4, 6, 14, 15, 18, 20 and 22
PRESCRIBED CONCENTRATIONS AND VALUES

Table A Microbiological Parameters

Part 1: Directive requirements

Item	Parameters	Concentration or Value (maximum)	Units of Measurement	Point of compliance
1	Enterococci	0	number/100 ml	Consumers' taps
2	<i>E.coli</i>	0	number/100 ml	Consumers' taps
Part 2: National requirements				
1	Coliform bacteria	0	number/100 ml	Service reservoirs 1 and water treatment works
2	<i>E. coli</i>	0	number/100 ml	Service reservoirs and water treatment works

Note:

(1) Compliance required as to 95% of samples from each service reservoir (regulation 4(6)).

Table B Chemical Parameters

Part 1: National requirements

Item	Parameters	Concentration or Value (maximum)	Units of Measurement	Point of compliance
1	Acrylamide	0.10	µg/l	1
2	Antimony	5.0	µgSb/l	Consumers' taps
3	Arsenic	10	µgAs/l	Consumers' taps
4	Benzene	1.0	µg/l	Consumers' taps
5	Benzo(a)pyrene	0.010	µg/l	Consumers' taps
6	Boron	1.0	mgB/l	Consumers' taps
7	Bromate	10	µBrO3/l	Consumers' taps
8	Cadmium	5.0	µgCd/l	Consumers' taps
9	Chromium	50	µgCr/l	Consumers' taps
10	Copper	2.0	mgCu/l	Consumers' taps
11	Cyanide	50	µgCN/l	Consumers' taps
12	1, 2 dichloroethane	3.0	µg/l	Consumers' taps
13	Epichlorohydrin	0.10	µg/l	1
14	Fluoride	1.5	mgF/l	Consumers' taps
15	Lead	10	µgPb/l	Consumers' taps
16	Mercury	1.0	µgPb/l	Consumers' taps
17	Nickel	20	µgNi/l	Consumers' taps
18	Nitrate 2	50	mgNO3/l	Consumers' taps
19	Nitrite 2	0.50	mgNO2/l	Consumers' taps

		0.10		Treatment Works
20	Pesticides 3, 4			
	Aldrin	0.030	µg/l	Consumers' taps
	Diieldrin			
	Heptachlor			
	Heptachlor epoxide			
	other pesticides	0.10	µg/l	Consumers' taps
21	Pesticides: Total 5	0.50	µg/l	Consumers' taps
22	Polycyclic aromatic hydrocarbons 6	0.10	µg/l	Consumers' taps
23	Selenium	10	µgSe/l	Consumers' taps
24	Tetrachloroethene and Trichloroethene 7	10	µg/l	Consumers' taps
25	Trihalomethanes: Total 8	100	µg/l	Consumers' taps
26	Vinyl chloride	0.50	µg/l	1

Notes:

(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. This is controlled by product specification.

(2) See also regulation 4(2)(d).

(3) See the definition of "pesticides and related products" in regulation 2.

(4) The parametric value applies to each individual pesticide.

(5) "Pesticides: Total" means the sum of the concentrations of the individual pesticides detected and quantified in the monitoring procedure.

(6) The specified compounds are:

benzo(b)fluoranthene

benzo(k)fluoranthene

benzo(ghi)perylene

indeno(1,2,3-cd)pyrene.

The parametric value applies to the sum of the concentrations of the individual compounds detected and quantified in the monitoring process.

(7) The parametric value applies to the sum of the concentrations of the individual compounds detected and quantified in the monitoring process.

(8) The specified compounds are:

chloroform

bromoform

dibromochloromethane

bromodichloromethane.

The parametric value applies to the sum of the concentrations of the individual compounds detected and quantified in the monitoring process.

Part 2: National requirements

Item	Parameters	Concentration or Value (maximum	Units of Measurement	Point of compliance
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			unless otherwise stated)	
1	Aluminium	200	µgAl/l	Consumers' taps
2	Colour	20	mg/l Pt/Co	Consumers' taps
3	Iron	200	µgFe/l	Consumers' taps
4	Manganese	50	µgMn/l	Consumers' taps
5	Odour	Acceptable to consumers and no abnormal change		Consumers' taps
6	Sodium	200	mgNa/l	Consumers' taps
7	Taste	Acceptable to consumers and no abnormal change	...	Consumers' taps
8	Tetrachloromethane	3	µg/l	Consumers' taps
9	Turbidity	4	NTU	Consumers' taps

SCHEDULE 2 Regulations 2, 6, 12, 15 and 19

INDICATOR PARAMETERS

Item Parameters	Specification	Concentration or Value (maximum unless otherwise stated) or State	Units of Measurement	Point of compliance
1	Ammonium	0.50	µgAl/l	Consumers' taps
2	Chloride ¹	250	mgCl/l	Supply point ⁵
3	Clostridium perfringens (including spores)	0	Number/100 ml	Supply point ⁵
4	Coliform bacteria	0	Number/100 ml	Consumers' taps
5	Colony counts	No abnormal change	Number/1 ml at 22°C	Consumers' taps, service reservoirs and treatment works
6	Conductivity ¹	2500	µS/cm at 20°C	Supply point ⁵
7	Hydrogen ion	9.5 6.5 (minimum)	pHvalue	Consumers' taps
8	Indicative dose ²	0.10	mSv	Supply point ⁵
	(a) gross alpha	0.1	Bq/l	Supply point ⁵
	(b) gross beta	1	Bq/l	Supply point ⁵
9	Radon ^c	100	Bq/l	Supply point
10	Sulphate ¹	250	mgSO ₄ /l	Supply point ⁵
11	Total organic carbon (TOC)	No abnormal change	mgC/l	Supply point
12	Tritium (for radioactivity) ⁴	100	Bq/l	Supply point
13	Turbidity	1	NTU	Treatment works

Notes:

- (1) The water should not be aggressive.
- (2) Where treatment to reduce the level of radionuclides in water intended for human consumption has been taken, monitoring must be carried out to ensure the continued efficacy of the treatment.
- (3) Remedial action may be taken by the Welsh Ministers on radiological protection grounds without further consideration and deemed to be justified where radon concentrates exceed 1,000 Bq/l.
- (4) If tritium concentration exceeds its parametric value, an investigation (which may include analysis) of the presence of artificial radionuclides is required.
- (5) May be monitored from samples of water leaving treatment works or other supply point, as no significant change during distribution.

SCHEDULE 3 Regulations 2, 6, 8 and 9

MONITORING

Part 1

Group A and Group B Parameters

Table 1

Group A parameters and circumstances for monitoring

<i>Item number (1)</i>	<i>Parameter (2)</i>	<i>Circumstances (3)</i>
1	Aluminium	Where used as a water treatment chemical or where the water originates from, or is influenced by, surface waters
2	Ammonium	Where chloramination is practised
3	Coliform bacteria	In all circumstances
4	Colony counts 22 ° C	In all circumstances
5	Colour	In all circumstances
6	Conductivity(1)	In all circumstances
7	<i>E. coli</i>	In all circumstances
8	Hydrogen ion	In all circumstances
9	Iron	Where used as a water treatment chemical or where the water originates from, or is influenced by, surface waters
10	Manganese	Where the water originates from, or is influenced by, surface waters
11	Nitrate	Where chloramination is practised
12	Nitrite	Where chloramination is practised
13	Odour	In all circumstances
14	Residual disinfectant	In all circumstances
15	Taste	In all circumstances
16	Turbidity	In all circumstances

Note:

(1) Sampling for this parameter in water supply zones may be substituted by sampling at supply points.

Table 2

Group B1 parameters and circumstances for monitoring to be used for sampling in water supply zones (or supply points)

<i>Item number</i>	<i>Parameter (2)</i>	<i>Circumstances</i>
1	Aluminium	Where— (i) not used as a water treatment chemical; or (ii) the water neither originates from, nor is influenced by, surface waters.
2	Ammonium	Where chloramination is not practised
3	Antimony	In all circumstances
4	Arsenic	In all circumstances
5	Benzene (1)	In all circumstances
6	Benzo(a)pyrene	In all circumstances
7	Boron (1)	In all circumstances
8	Bromate (2)	In all circumstances
9	Cadmium	In all circumstances
10	Chloride (1)	In all circumstances
11	Chromium	In all circumstances
12	<i>Clostridium perfringens</i> (including spores)	In all circumstances
13	Copper	In all circumstances
14	Cyanide (1)	In all circumstances
15	1, 2 dichloroethane (1)	In all circumstances
16	Enterococci	In all circumstances
17	Fluoride (1)	In all circumstances
18	Gross alpha (1) (3) (4)	In all circumstances
19	Gross beta (1) (3) (4)	In all circumstances
20	Iron	Where— (i) not used as a flocculant; or (ii) the water neither originates from, nor is influenced by, surface waters.
21	Lead	In all circumstances
22	Manganese	Where the water neither originates from, nor is influenced by, surface waters.
23	Mercury (1)	In all circumstances
24	Nickel	In all circumstances
25	Nitrate	Where chloramination is not practised.
26	Nitrite	Where chloramination is not practised.
27	Pesticides and related products (1)	In all circumstances
28	Polycyclic aromatic hydrocarbon	In all circumstances
29	Radon (1) (4)	In all circumstances
30	Selenium	In all circumstances
31	Sodium	In all circumstances
32	Sulphate (1)	In all circumstances
33	Tetrachloroethene (1)	In all circumstances
34	Tetrachloromethane (1)	In all circumstances

35	Total organic carbon (1) Trichloroethene Trihalomethanes: Total	In all circumstances
36	Tritium (1) (4)	In all circumstances

Notes:

(1) Sampling for these parameters may be within water supply zones (Group B1) or at supply points (Group B2).

(2) Monitoring of this parameter in water supply zones is required only where sodium hypochlorite is added after water has left the treatment works. In other circumstances, monitoring is required at supply points, see Group B2.

(3) To monitor for indicative dose.

(4) In the event that a single sample is taken in a year, a further sample must be taken if there is any change in relation to that supply that could affect the concentration of radionuclides in the water supply.

Table 3

Group B2 parameters and circumstances for monitoring to be used for sampling at works or supply points

<i>Item number</i>	<i>Parameter (2)</i>	<i>Circumstances</i>
1	Benzene (1)	In all circumstances
2	Boron (1)	In all circumstances
3	Bromate (2)	In all circumstances
4	Chloride (1)	In all circumstances
5	<i>Clostridium perfringens</i> (including spores)	In all circumstances
6	Cyanide (1)	In all circumstances
7	1, 2 dichloroethane (1)	In all circumstances
8	Fluoride (1)	In all circumstances
9	Gross alpha (1) (3) (4)	In all circumstances
10	Gross beta (1) (3) (4)	In all circumstances
11	Indicative dose	In all circumstances
12	Mercury (1)	In all circumstances
13	Nitrite	When chloramination is not practised.
14	Pesticides and related products (1)	In all circumstances
15	Radon (1) (4)	In all circumstances
16	Sulphate (1)	In all circumstances
17	Tetrachloroethene (1)	In all circumstances
18	Tetrachloromethane (1)	In all circumstances
19	Total organic carbon (1)	
20	Trichloroethene	In all circumstances
21	Tritium (1) (4)	In all circumstances

Notes:

(1) Sampling for these parameters may be within water supply zones (Group B1) or at supply points (Group B2).

(2) Monitoring is required at supply points where sodium hypochlorite is not added after water has left the treatment works. In other circumstances, see Group B1.

(3) To monitor for indicative dose.

(4) In the event that a single sample is taken in a year, a further sample must be taken if there is any change in relation to that supply that could affect the concentration of radionuclides in the water supply.

Table 4

Group A1 parameters

<i>Item number</i>	<i>Parameter</i>
1	Coliform bacteria
2	<i>E. coli</i>
3	Residual disinfectant

Table 5

Group A2 parameters

<i>Item number</i>	<i>Parameter</i>
1	Coliform bacteria
2	Colony counts 22° C
3	<i>E.coli</i>
4	Nitrite
5	Residual disinfectant
6	Turbidity

Table 6

Group A3 parameters

<i>Item number</i>	<i>Parameter</i>
1	Conductivity

Table 7

Group A4 parameters

<i>Item number</i>	<i>Parameter</i>
1	Aluminium
2	Ammonium
3	Colony counts 22° C
4	Colour
5	Conductivity
6	Hydrogen ion
7	Iron
8	Manganese
9	Nitrate
10	Nitrite
11	Odour
12	Taste
13	Turbidity

PART 2

Annual sampling frequencies: water supply zones

Table 8

Annual sampling frequencies for Group A4 parameters: water supply zones

Note:

This table and each table which follows it in this Part set out the annual sampling frequencies for all the substances and parameters comprising each of the groups to which they correspond, those groups having been outlined in Part 1 of this Schedule. These are determined for each water supply zone according to its estimated population (as specified in column one of each table in this Part). The number of samples to be taken is the standard number specified in column 2, unless a notice varying this number has been given under regulation 9.

<i>Estimated population of water supply zone</i>	<i>Standard sampling frequency per year</i>
<100	2
100-4,999	4
5,000—9,999	12
10,000-29,999	24
30,000-49,999	36
50,000-79,999	52
80,000-100,000	76

Table 9

Annual sampling frequencies for Group B1 parameters: water supply zones

<i>Estimated population of water supply zone</i>	<i>Standard sampling frequency per year</i>
<100	1
100-4,999	4
5,000-100,000	8

Table 10

Annual sampling frequencies for Group A1: water supply zones

<i>Estimated population of water supply zone</i>	<i>Standard sampling frequency per year</i>
<100	4
≥100	12 per 5,000 population

Note:

For the purposes of this Table, where the population is not an exact multiple of 5,000, the population figure must be rounded up to the nearest multiple of 5,000.

PART 3

Annual sampling frequencies: treatment works and supply points

Table 11

Annual sampling frequencies for Group A2 parameters: treatment works or supply points

Note: This table and each table which follows it in this Part set out the annual sampling frequencies for all the substances and parameters comprising each of the groups to which they correspond at treatment works or supply points, those groups having been outlined in Part 1 of this Schedule. The frequencies are determined according to the volume of water supplied at each

treatment works or supply point. The number of samples to be taken is the standard number specified in column 2, unless a notice varying this number has been issued under regulation 9.

<i>Volume of water supplied m³/day</i>	<i>Standard sampling frequency per year</i>
<20	4
20-1,999	52
2,000-5,999	104
6,000-11,999	208
≥12,000	365

Table 12

Annual sampling frequencies for Group A3 parameters: treatment works or supply points

<i>Volume of water supplied m³/day</i>	<i>Standard sampling frequency per year</i>
<20	2
20-999	4
1,000-1999	12
2,000-5,999	24
6,000-9,999	36
10,000-15,999	52
16,000-32,999	104
33,000-49,999	156
50,000-67,999	208
68,000-84,999	260
85,000-101,999	312
102,000-119,999	365
120,000-241,999	730
242,000-484,999	1,460
485,000-728,999	2,190

Table 13

Annual sampling frequencies for Group B2 parameters: treatment works or supply points

<i>Volume of water supplied m³/day</i>	<i>Standard sampling frequency per year</i>
<20	1
20-999	4
1,000-49,999	8
50,000-89,999	12
90,000-299,999	24
300,000-649,999	36
≥650,000	48

SCHEDULE 4 Regulation 6

Monitoring for indicative dose and analytical performance characteristics

Monitoring for compliance with the indicative dose

1.—(1) A water undertaker may use reliable screening strategies to indicate the presence of radioactivity in water intended for human consumption.

- (2) The strategies may include screening for—
- (a) certain radionuclides or individual radionuclide; or
 - (b) gross alpha activity or gross beta activity (where appropriate gross beta activity may be replaced by residual beta activity after subtraction of the K-40 activity concentration).

Screening for certain radionuclides, or screening for an individual radionuclide

2.—(1) If one of the activity concentrations exceeds 20% of the corresponding derived value or the tritium concentration exceeds its parametric value listed in Schedule 2 an analysis of additional radionuclides is required.

(2) In deciding which radionuclides are required to be measured for each supply, a water undertaker must take into account all relevant information about likely sources of radioactivity.

Screening strategies for gross alpha activity and gross beta activity

3.—(1) A water undertaker may use a screening strategy for gross alpha and gross beta to monitor for the parametric indicator value for indicative dose.

(2) Subject to sub-paragraph (3) the recommended screening values are—

- (a) 0,1Bq/l for gross alpha activity; and
- (b) 1,0Bq/l for gross beta activity(1).

(3) If the gross alpha activity exceeds 0,1Bq/l or the gross beta activity exceeds 1,0Bq/l, analysis for specific radionuclides is required.

(4) The Welsh Ministers may set alternative screening levels for gross alpha activity and gross beta activity where it can be demonstrated by the water undertaker that the alternative levels are in compliance with an indicative dose of 0,1 mSv.

(5) The radionuclides to be measured must be based on all relevant information about likely sources of radioactivity.

Calculation of the indicative dose

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

- (a) the measured radionuclide concentrations and the dose coefficients referred to as “standard values and relationships” in Article 13, and recommended for the estimation of doses from internal exposure in the definition of “standard values and relationships” in Article 4(96), of Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation(2);or
- (b) more recent information recognised by the Welsh Ministers, on the basis of the annual intake of water (730 l for adults).

(2) Where the following formula is satisfied, it can be assumed that the indicative dose is less than the parametric value of 0,1 mSv and no further investigation is required—

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

where—

“*C_i(obs)*” means observed concentration of radionuclide I;

“*C_i(der)*” means derived concentration of radionuclide i;

(1) Where appropriate, gross beta activity may be replaced by residual beta activity after subtraction of the K-40 activity concentration.
 (2) OJ No L 13, 17.1.2014, p.1. For the estimation of doses from internal exposure, Article 4(96) refers to chapter 1 of ICRP (International Commission on Radiological Protection) Publication 119. See Table F.1 in Annex F. A copy of ICRP Publication 119 can be obtained from the ICRP website (www.icrp.org) or from the Welsh Government Water Branch, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

“n” means number of radionuclides detected.

Table 1

Derived concentrations for radioactivity in water intended for human consumption

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 referred to as “standard values and relationships” in Article 13, and recommended for the estimation of doses from internal exposure in the definition of “standard values and relationships” in Article 4(96), of Council Directive 2013/59/Euratom. Derived concentrations for other radionuclides can be calculated on the same basis, and values can be updated on the basis of more recent information recognised by the Welsh Ministers.

Origin	Nuclide	Derived concentration
Natural	U-238 ^a	3,0 Bq/l
	U-234 ^a	2,8 Bq/l
	Ra-226	0,5 Bq/l
	Ra-228	Ra-228
	Pb-210	0,2 Bq/l
	Po-210	0,1 Bq/l
Artificial	C-14	240 Bq/l
	Sr-90	4,9 Bq/l
	Pu-239/Pu-240	0,6 Bq/l
	Am-241	0,7 Bq/l
	Co-60	40 Bq/l
	Cs-134	7,2 Bq/l
	Cs-137	11 Bq/l
	I-131	6,2 Bq/l

^a This table allows only for the radiological properties of uranium, not for its chemical toxicity.

Performance characteristics and methods of analysis

For the following parameters and radionuclides, the method of analysis used must, as a minimum, be capable of measuring activity concentrations with a limit of detection specified below:

Parameters and radionuclides	Limit of detection (Notes 1,2)	Notes
Tritium	10 Bq/l	Note 3
Radon	10 Bq/l	Note 3
gross alpha	0,04 Bq/l	Note 4
gross beta	0,4 Bq/l	Note 4
U-238	0,02 Bq/l	
U-234	0,02 Bq/l	
Ra-226	0,04 Bq/l	
Ra-228	0,02 Bq/l	Note 5
Pb-210	0,02 Bq/l	
Po-210	0,01 Bq/l	
C-14	20 Bq/l	
Sr-90	0,4 Bq/l	
Pu-239/Pu-240	0,04 Bq/l	
Am-241	0,06 Bq/l	
Co-60	0,5 Bq/l	
Cs-134	0,5 Bq/l	
Cs-137	0,5 Bq/l	
I-131	0,5 Bq/l	

Notes:

(3) The limit of detection must be calculated according to the ISO standard 11929: Determination of the characteristic limits (decision threshold, detection limit, and limits of confidence interval) for measurements of ionising radiation – Fundamentals and application, with probabilities of errors of 1st and 2nd kind of 0,05 each.

(4) Measurement uncertainties must be calculated and reported as complete standard uncertainties, or as expanded uncertainties with an expansion factor of 1,96 according the ISO Guide for the Expression of Uncertainty in Measurement.

(5) The limit of detection for tritium and for radon is 10% of its parametric value of 100 Bq/l.

(6) The limit of detection for gross alpha activity and gross beta activities are 40% of the screening values of 0,1 and 1,0 Bq/l respectively.

(7) This limit of detection applies only to initial screening for indicative dose for a new water source; if initial checking indicates that it is not plausible 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 5 Regulations 15 and 16

ANALYTICAL METHODOLOGY

Table A1

Parameters for which, subject to Regulation 15(7), methods of analysis are specified

<i>(1)</i> Parameter	<i>(2)</i> Method of analysis
E. coli and coliform bacteria	EN ISO 9308-1(1) or EN ISO 9308-2(2)
Enterococci	EN ISO 7899-2(3)
<i>Pseudomonas aeruginosa</i>	EN ISO 16266(4)
Enumeration of culturable microorganisms – colony count 22°C	EN ISO 6222(5)
Enumeration of culturable microorganisms – colony count 36°C	EN ISO 6222
<i>Clostridium perfringens</i> including spores	EN ISO 14189(6)

Table A2

- (1) This standard entitled “*Water quality - Enumeration of Escherichia coli and coliform bacteria - Part 1: Membrane filtration method for waters with low bacterial background flora (ISO 9308-1:2014)*” was approved by the European Committee for Standardization (CEN) on 18 January 2017. Under reference BS EN ISO 9308-1:2014+A1:2017, it is published as a UK standard by the British Standards Institution (ISBN 978 0 580 92379 1).
- (2) This standard entitled “*Water quality - Enumeration of Escherichia coli and coliform bacteria - Part 2: Most probable number method (ISO 9308-2:2012)*” was approved by the European Committee for Standardization (CEN) on 11 April 2014. Under reference BS EN ISO 9308-2:2014, it is published as a UK standard by the British Standards Institution (ISBN 978 0 580 84023 4).
- (3) This standard entitled “*Water quality - Detection and enumeration of intestinal enterococci - Part 2: Membrane filtration method (ISO 7899-2:2000)*” was approved by the European Committee for Standardization (CEN) on 11 April 2014. Under reference BS EN ISO 7899-2:2000, it is published as a UK standard by the British Standards Institution (ISBN 0 580 34953 5).
- (4) This standard entitled “*Water quality - Detection and enumeration of Pseudomonas aeruginosa - Method by membrane filtration (ISO 16266:2006)*” was approved by the European Committee for Standardization (CEN) on 11 January 2008. Under reference BS EN ISO 16266:2008, it is published as a UK standard by the British Standards Institution (ISBN 978 0 580 59736 7).
- (5) This standard entitled “*Water quality - Enumeration of culturable micro-organisms - Colony count by inoculation in a nutrient agar culture medium (ISO 6222:1999)*” was approved by the European Committee for Standardization (CEN) on 16 March 1999. Under reference BS EN ISO 6222:1999, it is published as a UK standard by the British Standards Institution (ISBN 0 580 32495 8).
- (6) This standard entitled “*Water quality - Enumeration of Clostridium perfringens - Method using membrane filtration (ISO 14189:2013)*” was approved by the European Committee for Standardization (CEN) on 15 July 2016. Under reference BS EN ISO 14189:2016, it is published as a UK standard by the British Standards Institution (ISBN 978 0 580 92184 1).

Parameters in relation to which methods of analysis must satisfy prescribed characteristics

<i>(1)</i> <i>Parameters</i>	<i>(2)</i> <i>Trueness % of prescribed concentration or value or specification</i>	<i>(3)</i> <i>Precision % of prescribed concentration or value or specification</i>	<i>(4)</i> <i>Limit of detection % of prescribed concentration or value or specification</i>
Aluminium	10	10	10
Ammonium	10	10	10
Antimony	25	25	25
Arsenic	10	10	10
Benzene	25	25	25
Benzo(a)pyrene	25	25	25
Boron	10	10	10
Bromate	25	25	25
Cadmium	10	10	10
Chloride	10	10	10
Chromium	10	10	10
Colour	10	10	10
Conductivity	10	10	10
Copper	10	10	10
Cyanide ¹	10	10	10
1,2-dichloroethane	25	25	10
Fluoride	10	10	10
Hydrogen ion concentration pH (expressed in pH units)	0.2	0.2	
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
Pesticides and related products ²	25	25	25
Polycyclic aromatic hydrocarbons ³	25	25	25
Selenium	10	10	10
Sodium	10	10	10
Sulphate	10	10	10
Tetrachloromethane	20	25	10
Trichloroethene ⁴	25	25	10
Trihalomethanes:	25	25	10
Total ³			
Turbidity ⁵	10	10	10
Turbidity ⁶	25	25	25

Notes:

(1) The method of analysis should determine total cyanide in all forms.

(2) The performance characteristics apply to each individual pesticide and will depend on the pesticide concerned.

(3) The performance characteristics apply to the individual substances specified at 25% of the parametric value in Part 1 of Table B in Schedule 1.

(4) The performance characteristics apply to the individual substances specified at 50% of the parametric value in Part 1 of Table B in Schedule 1.

(5) The performance characteristics apply to the prescribed value of 4NTU.

(6) The performance characteristics apply to the specification of 1NTU for water leaving treatment works.

Table A3

Minimum performance characteristic “uncertainty of measurement”

The uncertainty of measurement laid down in this table must not be used as an additional tolerance to the parametric values set out in Schedules 1 and 2.

<i>(1)</i> <i>Parameter</i>	<i>(2)</i> <i>Uncertainty of measurement % of the parametric value (except for pH) ¹</i>
Aluminium	25
Ammonium	40
Antimony	40
Arsenic	30
Benzene	40
Benzo(a)pyrene ²	50
Boron	25
Bromate	40
Cadmium	25
Chloride	15
Chromium	30
Colour	20
Conductivity	20
Copper	25
Cyanide ³	30
1,2-dichloroethane	40
Fluoride	20
Hydrogen ion concentration pH (expressed in pH units)	0.2
Iron	30
Lead	25
Manganese	30
Mercury	30
Nickel	25
Nitrate	15
Nitrite	20
Oxidisability ⁴	50
Pesticides ⁵	30
Polycyclic aromatic hydrocarbons ⁶	50
Selenium	40
Sodium	15
Sulphate	15
Tetrachloroethene ⁶	30
Tetrachloromethane	30
Trichloroethene ⁷	40
Trihalomethanes: total ⁶	40

Total organic carbon ⁸	30
Turbidity ⁹	30

Notes:

(1) “Uncertainty of measurement” is a non-negative parameter characterising the dispersion of the quantity values being attributed to a measurement, based on the information used. The performance criterion for measurement uncertainty ($k = 2$) is at least the percentage of the parametric value stated in the table. If the value of uncertainty of measurement cannot be met, the best available technique must be selected (up to 60 % of the parametric value).

(2) The method determines total cyanide in all forms.

(3) Reference method: European standard EN ISO 8467 entitled “*Water quality - Determination of permanganate index (ISO 8467)*”(1).

(4) 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.

(5) The performance characteristics apply to individual substances, specified at 25% of the parametric value in Part 1 of Table B in Schedule 1.

(6) The performance characteristics apply to individual substances, specified at 50 % of the parametric value in Part 1 of Table B in Schedule 1.

(7) The uncertainty of measurement must be estimated at the level of 3 mg/l of the total organic carbon (TOC) in accordance with European standard EN 1484 entitled “*Water analysis - Guidelines for the determination of total organic carbon and dissolved organic carbon*”(2) and dissolved organic carbon (DOC) shall be used.

(8) The uncertainty of measurement must be estimated at the level of 1,0 NTU in accordance with European standard EN ISO 7027-1 entitled “*Water quality - Determination of turbidity - Part 1: Quantitative methods (ISO 7027-1)*”(3).

SCHEDULE 6 Regulation 40 Amendments and revocations

Table 1

(1) Regulations to be amended	(2) Reference	(3) Provision to be amended	(4) Amendments
The Water Quality and Supply (Fees) (Undertakers Wholly or Mainly in Wales) Order 2016	S.I. 2016/843 (W. 213)	The Schedule	In the English language text, in each place it occurs, for “Water Supply (Water Quality) Regulations 2010” substitute “Water Supply (Water Quality) Regulations 2018” In the Welsh language text, in each place it occurs for “Rheoliadau

(1) This standard was approved by the European Committee for Standardization (CEN) on 3 November 1994. Under reference EN ISO 8467:1995, it is published as a UK standard by the British Standards Institution (ISBN 0 580 23435 5).
 (2) This standard was approved by the European Committee for Standardization (CEN) on 6 April 1997. Under reference BS EN 1484:1997, it is published as a UK standard by the British Standards Institution (ISBN 0 580 28372 0).
 (3) This standard was approved by the European Committee for Standardization (CEN) on 15 April 2016. Under reference BS EN ISO 7027-1:2016, it is published as a UK standard by the British Standards Institution (ISBN 978 0 580 81961 2).

Cyflenwi Dŵr (Ansawdd Dŵr) 2010” substitute Rheoliadau Cyflenwi Dŵr (Ansawdd Dŵr) 2018”

Table 2

<i>(1) Regulations revoked</i>	<i>(2) Reference</i>	<i>(3) Extent of revocation</i>
The 2010 Regulations	S.I. 2010/994 (W. 99)	The whole Regulations
The National Treatment Agency (Abolition) and the Health and Social Care Act 2012 (Consequential, Transitional and Savings Provisions) Order 2013 ⁽¹⁾	S.I. 2013/235	Paragraph 152 of Schedule 2
The Construction Products Regulations 2013	S.I. 2013/1387	Paragraph 7 of Schedule 5
The Private Water Supplies (Wales) Regulations 2017	S.I. 2017/1041 (W. 270)	Regulation 25
The Water Act 2014 (Consequential Amendments etc.) Order 2017	S.I. 2017/506	Article 28

⁽¹⁾ There are amendments not relevant to these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations supplement Chapter III (Water Supply) of the Water Industry Act 1991 (“the 1991 Act”) and revoke and replace the Water Supply (Water Quality) Regulations 2010. They are primarily concerned with the quality of water supplied by water undertakers whose areas are wholly or mainly in Wales (and water supply licensees using the supply systems of such undertakers) for drinking, washing, cooking and food preparation, and for food production, and with arrangements for the publication of information about water quality.

The Regulations implement Council Directive 98/83/EC (OJ No L 330, 5.12.98, p. 32) (“the 1998 Directive”), on the quality of water intended for human consumption and their purpose is to protect human health from the adverse effects of any contamination of water intended for human consumption by ensuring that it is wholesome and clean. They also transpose the requirements of 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 (OJ No L 296, 7.11.2013, p 12).

Part 1 of the Regulations (regulations 1 and 2) contains preliminary provisions and defines terms that are used in the Regulations.

Part 2 (regulation 3) requires water undertakers to identify annually the areas (“water supply zones”) that are to be relevant for a particular year for the purposes of the application of provisions of the Regulations. A water supply zone may not comprise an area in which the estimated population exceeds 100,000. Water undertakers may not alter the boundaries of water supply zones during the year.

Part 3 (regulation 4) prescribes standards of wholesomeness in respect of water that is supplied for human consumption by water undertakers, including for domestic purposes including cooking, drinking food preparation or washing, or for food production purposes. These various purposes are referred to in the Regulations as “regulation 4(1) purposes”. In particular, regulation 4 provides that water is to be regarded as wholesome if it contains concentrations or values in respect of various properties, elements, organisms and substances that do not contravene prescribed maximum and, in some cases, minimum concentrations or values.

Part 4 (regulations 5 to 10) provides for the monitoring of water supplies. Regulation 5 defines two monitoring regimes; “monitoring of a Group A parameter” and “monitoring of a Group B parameter”. Regulation 6 sets out general monitoring provisions relating to the parameters set out in Schedules 1 (prescribed concentrations and values) and 2 (indicator parameters). Regulation 6 imposes requirements for the monitoring of indicative dose, radon and tritium (“radioactive parameters”) and introduces the additional monitoring provisions for the indicative dose parameter in Schedule 4 (Monitoring for indicative doses and analytical performance characteristics). Regulation 6 also makes provision for monitoring supplies from tankers. Regulation 7 requires water undertakers to select at random the points at which samples are to be taken for the purposes of monitoring (referred to as “sampling points”). Regulation 8 provides that the Welsh Ministers may authorise the taking of samples from points other than sampling points. Regulation 9 deals with the number of samples to be taken. These are specified in Schedule 3 (Monitoring). Regulation 10 requires samples to be taken where water undertakers have reason to believe that the quality of the water within their water supply zone has been adversely affected by the presence of certain elements, organisms or substances.

Part 5 (regulations 11 to 16) contains additional provisions relating to sampling. Regulations 12 and 13 require samples to be taken in respect of particular organisms and substances, at treatment works and at reservoirs which store treated water. Regulation 14 requires samples to be taken before water is supplied from new sources and from sources which have not recently been used. Regulation 15 prescribes requirements relating to the taking, handling, storage, transport and analysis of samples. Regulation 16 provides an alternative method of analysis to that in regulation 15(6)(b) that may be used by a water undertaker or supplementary licensee before 23:59 on 31 December 2019.

Part 6 (regulation 17) requires water undertakers and supplementary licensees to identify every point from which they abstract water for supply for regulation 4(1) purposes and to take samples from those points to comply with regulations 26 to 28. This implements Article 8(1) and (2) of Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy (OJ No L 327, 22.12.2000, p 1).

Part 7 (regulations 18 to 25) requires water undertakers and supplementary licensees to investigate the cause of any failure, or apprehended failure, of any parameters set out in Schedule 1 or any indicator parameters set out in Schedule 2 and to notify the Welsh Ministers. Where the failure is attributable to a domestic distribution system or the maintenance of that system, notification must be provided to the consumers of the affected water supply and to any other relevant supplier. Regulation 20 provides for actions that may be taken by the Welsh Ministers upon receipt of a notification under regulation 18 or 19. Where a failure relates to a parameter in Table B in Schedule 1, and certain other conditions are met, the Welsh Ministers may require the supplier to apply for an authorisation for a departure from the requirements of Part 3 of the Regulations. The circumstances in which authorisations may be granted and the conditions to which they are subject are set out in regulations 22 and 23. Provision is made in regulation 24 for publicising authorisations. Regulation 25 provides for the revocation and variation of authorisations.

Part 8 (regulations 26 to 33) deals with the treatment of water and regulates the substances, processes and products that may be used by water undertakers in connection with the supply of water. Regulation 26 imposes requirements relating to the disinfection of water and imposes additional requirements for the treatment of surface water. Regulation 27 provides for the carrying out of risk assessments and subsequent reviews. Regulation 28 requires water undertakers and supplementary licensees to submit reports of risk assessments and reviews to the Welsh Ministers. Paragraph (4) of regulation 28 sets out the steps that the Welsh Ministers may take on receipt of a report which states there is or has been a significant risk of supplying water that could constitute a potential danger to human health or could be unwholesome. Regulation 29 requires water undertakers and supplementary licensees to treat water to minimise the risk of copper and lead contamination from pipes. Regulation 30 sets out provisions relating to the replacement or modification of lead pipes. Regulation 31 specifies the circumstances in which water undertakers and supplementary licensees may apply or introduce substances or products into water supplied for regulation 4(1) purposes. Regulation 32 enables the Welsh Ministers to require that its approval be obtained to the use of processes in connection with the supply of water for regulation 4(1) purposes. Under regulation 33, contravention of specified requirements of regulations 26, 28, 31 and 32 are criminal offences, as is the making of false statements.

Part 9 (regulations 34 and 35) deals with the provision of information by water undertakers, supplementary licensees and retail licensees.

Part 10 (regulations 36 and 37) imposes requirements on local authorities in the performance of their duties in relation to the quality of water supplied by water undertakers or water supply licensees.

Part 11 (regulation 38) provides that contraventions by any relevant supplier of duties or requirements imposed by Parts 4 to 9 of the Regulations are to be enforceable under section 18 of the 1991 Act by the Welsh Ministers. This provision is additional to the criminal sanctions provided by regulation 33.

Part 12 (regulations 39 and 40) provides for transitional provisions, amendments and revocations (as set out in Schedule 6 (Amendments and revocations)).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

Explanatory Memorandum to The Water Supply (Water Quality) Regulations 2018.

This Explanatory Memorandum has been prepared by Economy, Skills and Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with:

Standing Order 27.1

Cabinet Secretary/Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Water Supply (Water Quality) Wales Regulations. I am satisfied that the benefits justify the likely costs.

Lesley Griffiths

Cabinet Secretary for Energy, Planning and Rural Affairs.

25 May 2018

1. Description

Council Directive 98/83/EC (the Drinking Water Directive (DWD)) has been amended by Commission Directive (EU) 2015/1787 (Directive 2015/1787) to align with the World Health Organisation (WHO) principles for the risk based sampling and analysis of drinking water supply, reflecting scientific and technical progress in the protection of public health. To transpose the DWD.

The Water Supply (Water Quality) Regulations 2018 will revoke and replace the Water Supply (Water Quality) Regulations 2010 transposing the additional requirements of Council Directive 98/83/EC.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

These Regulations apply to the operations of water companies providing drinking water operating wholly or mainly in Wales. As such they apply in parts of England and are laid simultaneously in Parliament and the National Assembly for Wales as required by section 59(4) of the Government of Wales Act 2006 ("GoWA 2006").

Paragraph 3 of this Memorandum explains that these Regulations are made partly in reliance on section 2(2) of the European Communities Act 1972. By virtue of section 59(3) of GoWA 2006, the Welsh Ministers are to determine whether an instrument made in exercise of the section 2(2) powers is to be subject to the negative or affirmative procedure.

As these Regulations are directly transposing the requirements of the Directive, the Welsh Ministers have determined that these Regulations are to be subject to the negative resolution procedure.

The transposition deadline for the 2015 Directive was 27 October 2017, which has not been met.

The regulations impact on water undertakers who have responsibilities in both England and Wales. Following engagement with the water companies, officials agreed to align the Welsh set of Regulations with the English Regulations; to ensure water companies were not working to two different sets of Regulations with differing requirements, which would impact on their operational efficiency and removes duplication of work within the affected water undertakers. Officials therefore agreed to work to Defra's timeline to ensure that any changes made to the English Regulations were also included in the Welsh Regulations.

Defra's timeline has been delayed due to a number of circumstances including delays in their consultation process. If the Welsh Regulations were laid before the final amendments to the English Regulations were made, the regulations

would once again differ in specifics for no policy reason. This would not be in the interests of the water undertakers impacted by these Regulations. Defra accept that the delay in laying these regulations is due to the English timeline slipping.

3. Legislative background

These Regulations are made by the Welsh Ministers in exercise of the powers conferred by—

- (i) section 2(2) of the European Communities Act 1972 (“the 1972 Act”), in relation to the Welsh Ministers’ designation in relation to the quality of water intended for domestic purpose or for use in a food production undertaking; and
- (ii) sections 67, 69, 77(3) & (4) and 213 of the Water Industry Act 1991 (“the 1991 Act”).

Section 2(2) of the 1972 Act provides that Ministers may be designated to make provision for the purpose of implementing EU obligations, or for the purpose of dealing with matters arising out of or related to any such obligation. Section 59(1) of GoWA 2006 provides that section 2(2) may be used to designate the Welsh Ministers. The Welsh Ministers are designated for the purposes of section 2(2) of the 1972 Act in relation to the quality of water intended for domestic purposes or for use in food production undertaking. The National Assembly for Wales was originally designated by means of The European Communities (Designation)(No 7) Order 2002 and those functions are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraphs 28 and 30 of Schedule 11 to GoWA 2006.

The relevant functions of the Secretary of State under the 1991 Act were transferred to the National Assembly for Wales by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 as follows—

- Functions under section 67 were transferred for
 - a) the making of regulations concerning water supplied using the supply system of a water undertaker, in relation to the supply system of any water undertaker whose area is wholly or mainly in Wales; and
 - b) the making of regulations concerning water supplied other than using the supply system of a water undertaker, in relation to Wales, by article 2 of, and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999;
- Functions under sections 69 and 77 were transferred in full;
- Functions under section 213 were transferred to the Assembly to the same extent as the powers, duties and other provisions to which that section applies were exercisable by the Assembly.

The functions conferred on the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraphs 28 and 30 of Schedule 11 to, GoWA 2006.

As outlined above, the Regulations are subject to the negative procedure, and are required to be laid before both the National Assembly for Wales and Parliament by virtue of section 59(4) of GoWA 2006 and paragraph 2(2) of Schedule 2 of the 1972 Act, due to the fact the Regulations will relate to cross border bodies.

4. Purpose & intended effect of the legislation

This instrument applies to England and Wales.

The policy objectives of these regulations are to:

- Update legislation to be aligned with the updates of the latest World Health Organisation (WHO) principles for the sampling and analysis of public drinking water supplies;
- Make other technical and drafting improvements to the legislation, following stakeholder engagement on the Water Supply (Water Quality) Regulations 2010, which will provide clarity on existing requirements;
- Transpose Commission Directive (EU) 2015/1787 that amends Annexes II and III of the DWD.

The objective of the Regulations is to include new EU requirement for the risk based sampling and analysis of drinking water supply, reflecting scientific and technical progress in the protection of public health

This will enable water undertakers and the Welsh Ministers to make informed and valid decisions for the reduction or cessation of sampling, enabling resources to be focused on higher risk supplies whilst ensuring public health protection is not compromised.

Following stakeholder engagement on the 2010 regulations and subsequent amendments to the 2010 Drinking Water Regulations, other improvements have been made to the Regulations which provide clarity on existing requirements making it more readily understood by the water industry.

The 2010 Regulations have been consolidated into new regulations to transpose the latest amendments to the DWD, rather than amending regulations being issued. This approach provides for a more accessible regime than transposing the DWD through further amendments to the 2010 Regulations, and also allows the wider clarifications to the Regulations to be addressed.

Implementation of the Directive by administrative or non-regulatory means, such as guidance or a code of practice, would not transpose the Directive into national law and would not achieve the controls and measures needed to monitor and enforce the Directive's standards and other wholesomeness requirements.

The Water Supply (Water Quality) Regulations 2018 clarify the regulatory requirements in respect of the aspects relating to public water supplies provided by water undertakers operating wholly or mainly in Wales, and water supply licensees using the supply system of such undertakers. As such, they apply to Wales and those parts of England supplied by such undertakers or licensees. Separate regulations are made in Scotland, Northern Ireland and for undertakers of licensees whose supply area is wholly or mainly in England.

The Council of the European Union adopted the amendments to Annexes II and III of the DWD on 6th October 2015.

Annexes II and III to the DWD 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 DWD 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.

5. Consultation

The Regulations are a direct transposition of an EU Directive. The Directive requirements are very specific and do not give the Welsh Government discretion on how they can amend the regulations in terms of what the stakeholders must do. Due to these limitations a public consultation exercise has not been carried out, however officials have actively engaged with the water undertakers operating wholly or mainly in Wales, who will be impacted by changes to these regulations throughout their development to ensure that they are fit for purpose.

PART 2 – REGULATORY IMPACT ASSESSMENT

Introduction

Defra and the Drinking Water Inspectorate (DWI) have prepared a Regulatory Impact Assessment on an England and Wales basis, this can be accessed via the following link:

https://consult.defra.gov.uk/water-quality/drinking-water-regulations-2017/supporting_documents/Public%20Regulations%20Consultation%20Document.pdf

The European Union Drinking Water Directive (Council Directive 98/83/EC) concerns water intended for human consumption and sets out the standards and requirements for drinking water. This Directive is currently transposed into National Regulations and enforced in respect of public water supplies in England and Wales through The Water Supply (Water Quality) Regulations 2010 (as amended) for Wales) and the Water Supply (Water Quality) Regulations 2016 (for England).

Directive 2015/1787 updates the monitoring programme in the Drinking Water Directive (DWD) which sets a minimum frequency of sampling and analysis but also introduces a new risk assessment approach. Comprehensive monitoring and analysis incurs significant costs, especially where a large number of parameters need to be considered. Risk assessed flexible monitoring frequencies present potential cost-saving opportunities and reduces the collection of data that provides little or no information on the quality of drinking water but also protects public health by targeting high risk supplies.

For a water company to qualify for a monitoring variation the risk assessment implemented will need to be certified against the criteria set by the United Kingdom Accreditation Service (UKAS). This may require water companies to review and improve their risk approach to achieve certification, however, introducing a risk assessment will provide more effective use of water companies' resources whilst maintaining confidence in the quality of the water.

Directive 2015/1787 also introduces a change to the method of analysis of different chemical and indicator parameters. Laboratories will require guidance on the method to ensure a consistent approach and an appropriate amount of time will need to be provided for them to adapt to the new approach.

Once the Directive is transposed, Member States may extend the use of the current method of analysis (which uses 'trueness', 'precision' and 'limit of detection') until 31 December 2019. This is to provide laboratories with sufficient time to adapt to the proposed changes to the approach to 'uncertainty of measurement' (UoM) under the amendments for Annex III.

Options

The RIA presents the following three options:

Option 0: Do Nothing (i.e. do not transpose the EU Directive);

Option 1: Transpose Directive 2015/1787 in full with no further amendments; and

Option 2: Transpose Directive 2015/1787, also incorporating corrections to wording and clarification amendments to The Water Supply (Water Quality) Regulations 2016.

Costs and benefits

The following is a summary of the costs and benefits identified in the England and Wales RIA.

Option 0: Do nothing

Costs

This is counter to UK preferred policy and would be a missed opportunity to update our drinking water legislation in the light of scientific and technical progress.

Failure to transpose by the deadline set in Directive 2015/1787 of 27 October 2017 would also be in breach of our obligations under EU law, thus giving rise to some risk that the Commission will bring infraction proceedings for non-transposition and the associated costs.

Benefits

There are no additional benefits identified with this option.

Option 1 Transpose Directive 2015/1787 with no further amendments:

Costs

Drinking Water Inspectorate

The England and Wales RIA identifies transitional costs to the DWI of £350,000 to cover the costs of making changes to the database containing water sample data, establishing the Risk Assessment certification scheme and for the development of the policy and guidance. The same cost would be incurred whether the Regulations are introduced in England and Wales or on an England only basis.

Water companies

DWI was commissioned to calculate the costs and benefits of each option to the water industry. Due to the cross border nature of the water companies, the analysis covers the costs to the industry in both England and Wales.

There will be an initial cost to water companies to establish the new risk assessment (RA) process of £1.6m over three years (includes application, administration, improvement work, laboratory charges) and an additional cost of £1.6m spread over the 10-year appraisal period to maintain the system (including increased E.coli sampling annually and certification renewal after 5 years).

The public drinking water supply in England and Wales is provided by water undertakers. Of the 26 incumbent water supply companies in England and Wales, 5 companies serve customers in Wales but only 2 would generally be regarded as Welsh businesses. On this basis, it is anticipated that only a relatively small proportion of the water industry costs identified above would fall to Welsh businesses.

Benefits

This would meet the main objective of updating legislation to be aligned with the latest WHO principles for the sampling and analysis of public drinking water supply

The quality of public drinking water is monitored by water companies in order to protect public health and safeguard the welfare of individual consumers. The economic case for this intervention is based partly on the positive externalities (benefits for the general population) of preventing water-borne illness reaching any individual. In addition there is the equity or 'merit good' consideration that every individual deserves to receive wholesome water as a basic necessity and right, whether or not they are in a position to appreciate what it involves and demand it from their supplier. Water companies provide assurance to water consumers about the safety of water supplied to them both in their own home and in other commercial or public premises. Particular characteristics or parameters of the supply are monitored, for example specified bacteria and metals within the water that are potentially harmful in high concentrations.

The revised Annex II of the DWD establishes the criteria under which risk assessed decisions are made which will enhance confidence in the protection of public health through further assurance for the quality of public water supplies. In providing for a consistent approach, it will also enhance confidence at national level in the robust nature of the risk assessments being undertaken.

There are potential cost-savings to the water industry reflecting reduced water sampling requirements. It is estimated implementing the new RA process will reduce the number of samples from 911,085 to 102,265 per annum (based on 2015 figures). Based on the Drinking Water Inspectorates (DWI) charges to water companies this would save the industry £444,840 by year 3. There would also be a potential saving in analytical costs (due to reduced sampling) which is estimated to be £900,000 by year 3. As with the costs identified above, the majority of these savings would be expected to fall to businesses in England (due to the relative number of businesses).

Each of the water companies supplying properties in Wales is also responsible for supplying some properties in England. Introducing these Regulations in parallel to those in England avoids a situation whereby the water companies have to adhere to two separate systems.

Option 2: Transpose Directive 2015/1787, also incorporating corrections to wording and clarification amendments

Costs

The costs for this option are expected to be the same as those for Option 1.

Benefits

The benefits identified under Option 1 will also apply to this option.

In addition, taking the opportunity to clarify some of the existing regulatory provisions would be beneficial for the practical application of the Regulations and would reduce uncertainty amongst the industry. The changes include:

- Improvements to definitions where current definitions have been determined as ambiguous through consultation and review;
- Changes to terminology to align with the DWD; and
- Where requirements are conditional, that the conditions are clear and mutually exclusive.

Summary and preferred option with description of implementation plan

Option 2 is the Welsh Government's preferred option as we support the principle of the proposals made under Directive 2015/1787 in allowing for a risk assessed approach to monitoring and analysis and changing the performance characteristics of certain parameters via the UoM methodology. This will provide for more effective and proportionate monitoring and analysis with water companies able to focus their efforts in maintaining the quality of public drinking water supply. At the same time, other amendments to the Regulations will provide clarity on existing requirements making it more readily understood by the water industry.

Competition Assessment

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	Yes (see below)
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	
Q4: Would the costs of the regulation affect some firms substantially more than others?	Yes (see below)
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

Q1-3: Drinking water in England and Wales is supplied by private water companies that operate in de facto local monopolies due to the economies of scale in water collection, treatment and distribution. The industry is regulated by Ofwat who are responsible for ensuring consumers are protected.

Q4: The Regulations may have a differential impact depending upon firm size. Smaller firms may incur a higher cost to secure certification of their Risk Assessment methodology.

Agenda Item 4.3

SL(5)217 – The Environmental Protection (Microbeads) (Wales) Regulations 2018

Background and Purpose

The draft Regulations prohibit the use of microbeads as an ingredient in the manufacture of rinse-off personal care products and the sale of any such products containing microbeads. Breach of the prohibition is an offence. The regulations also introduce a civil sanctions regime to enable the regulator to impose a range of civil sanctions. The prohibition will come into force on 30th June 2018.

Procedure

Affirmative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Standing Order 21.3 (ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

- 1.The Explanatory Memorandum to these draft regulations states that the purpose of the legislation is to ban the manufacture and supply of rinse-off personal care products which contain plastic microbeads which evidence shows can pollute and cause harm to the marine environment.
- 2.A microbead is a water-insoluble solid plastic particle which measures less than or equal to 5mm in any dimension.
- 3.The ban will extend to all rinse-off personal care products containing plastic microbeads, as defined in regulation 2. The Explanatory Memorandum states



that rinse-off personal care products include, but are not limited to; products designed for use on the body, skin, hands, nails, face, hair and oral cavity, including to exfoliate, cleanse, lighten or colour, soften skin or hair, deodorise or perfume, as well as bath products with personal care properties and dental products.

4.The Explanatory Memorandum states that the ban is intended to:–

- Prevent further harm to marine animals and reduce the level of plastics entering our seas.
- Protect the marine environment and reduce the risk of severity of possible irreversible effects on food security and human health.
- Continue to encourage both existing and planned voluntary industry efforts to remove microbeads.
- Foster consumer confidence in products which will not cause marine pollution.
- Set an example for other countries and encourage wider adoption of legislation.

5.The Regulations will form part of a UK wide ban. UK Parliament have already approved similar legislation. The Scottish Government have also recently laid similar regulations.

Technical Standards Directive

6.In order to prevent creating new barriers to trade within the European Union, **Directive 2015/1535/EU** requires Members States to inform the Commission of any draft technical regulation prior to its adoption.

7.The draft regulations were notified to the Commission on 29th January 2018.

8.At page 14 of the Explanatory Memorandum it states:–

“The Commission provided a response to the TSD notification and noted they have requested the European Chemicals Agency (ECHA), in accordance with Article 69 (1) of the REACH Regulation to prepare an Annex XV dossier in view of



a possible restriction concerning the use of synthetic water-insoluble polymers of 5mm or less in any dimension (i.e. micro plastic particles) which are intentionally added to products of any kind. ECHA entered the relevant intention into the Registry of Intentions on 17 January 2018.

The Commission note if the UK authorities proceed to adopt the notified drafts, the Commission expects them to consider the adopted national measures as provisional and to take into account the final outcome of the ongoing REACH procedures”.

9. Article 5 (2) of **Directive 2015/1535/EU** requires notifying authorities to take the European Commission’s comments into account as far as is possible.

10. As it is not entirely clear from the Explanatory Memorandum whether the information provided represented the entirety of the European Commission’s comments, Assembly Legal Advisers sought further clarification.

11. Welsh Government are unable to share the Commission’s response but have confirmed that all European law obligations have been complied with when drafting the 2018 Regulations, and that the ongoing restriction procedure under the *Registration, Evaluation, Authorisation and Restriction of Chemicals Regulations (REACH Regulations) 1907/2006* is being monitored.

12. The Committee notes that there may be a need for the Welsh Government to make changes to legislation made by Welsh Ministers depending on the outcome of the REACH restriction procedure and any final Brexit agreement.

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A government response is not required.

Legal Advisers

Constitutional and Legislative Affairs Committee



25th May 2018



National Assembly for Wales

Constitutional and Legislative Affairs Committee

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Draft Regulations laid before the National Assembly for Wales under section 62(3) of the Regulatory Enforcement and Sanctions Act 2008, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2018 No. (W.)

**ENVIRONMENTAL
PROTECTION, WALES**

**The Environmental Protection
(Microbeads) (Wales) Regulations
2018**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prohibit the use of microbeads as an ingredient in the manufacture of rinse-off personal care products and the sale of any such products containing microbeads (regulation 3). Breach of this prohibition is an offence (regulation 3). Definitions of “microbead” and “rinse-off personal care product” are contained in regulation 2. The prohibition on the manufacture and sale of any such products will come into force on 30th June 2018.

A civil sanctions regime is also introduced to enable the regulator to impose a range of civil sanctions (regulation 7 and the Schedule). These include variable monetary penalties, compliance notices and stop notices. The regulator may also accept enforcement undertakings. The Regulations make provision for the procedure relating to these sanctions and the available appeal mechanisms. Failure to comply with a stop notice is an offence (paragraph 16 of the Schedule). All appeals relating to a civil sanction are to the First-tier Tribunal.

Regulation 8 gives enforcement officers powers to carry out investigations for an authorised purpose (as defined in regulation 2).

Regulation 9 gives enforcement officers powers of entry to carry out an investigation for an authorised purpose (as defined in regulation 2).

Regulation 10 creates offences associated with enforcement officers' powers in regulations 8 and 9.

Regulation 11 provides for publication of information on enforcement action taken by the regulator, and regulations 12 and 13 provide that guidance relating to the use of civil sanctions must be prepared and consulted on and specify information to be included in such guidance.

Regulation 14 contains provision for review of the Regulations.

Regulators are able to recover the costs of enforcement (paragraph 27 of the Schedule) in the case of variable monetary penalties, compliance notices and stop notices.

These Regulations were notified in draft to the European Commission in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ No. L 241, 17.9.2015, p. 1).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory assessment has been prepared as to the likely costs and benefits of complying with these Regulations in Wales. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

Draft Regulations laid before the National Assembly for Wales under section 62(3) of the Regulatory Enforcement and Sanctions Act 2008, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2018 No. (W.)

**ENVIRONMENTAL
PROTECTION, WALES**

**The Environmental Protection
(Microbeads) (Wales) Regulations
2018**

Made

Coming into force

30 June 2018

The Welsh Ministers—

- (a) have published a notice in the London Gazette and the Western Mail as required by section 140(6)(b) of the Environmental Protection Act 1990(1) (“the 1990 Act”) and have considered the representations made in accordance with that notice;
- (b) have consulted in accordance with sections 59 and 60 of the Regulatory Enforcement and Sanctions Act 2008(2) (“the 2008 Act”) and are satisfied (in accordance with section 66 of that Act) that local authorities (who are the regulator for the purpose of these Regulations) will act in accordance with the principles referred to in section 5(2) of that Act in exercising a power conferred by these Regulations;
- (c) consider it appropriate to make these Regulations for the purpose of preventing the substance or articles specified in them from causing pollution of the environment and harm to the health of animals.

(1) 1990 c.43.

(2) 2008 c. 13. For the purposes of these Regulations, “the regulator” has the meaning given by regulation 2, rather than the meaning given by section 37 of the 2008 Act.

In accordance with section 62(3) of the 2008 Act, a draft of these Regulations has been laid before, and approved by resolution of, the National Assembly for Wales.

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 140(1)(b) and (c), (3)(c) and (d), and (9) of the 1990 Act⁽¹⁾ and sections 36, 42, 46, 48, 49, 50, 52 to 55 and 62(2) of the 2008 Act⁽²⁾.

PART 1

Introduction

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Environmental Protection (Microbeads) (Wales) Regulations 2018.

(2) These Regulations come into force on the 30 June 2018.

(3) These Regulations extend to England and Wales, but apply in relation to Wales only.

Interpretation

2. In these Regulations—

“authorised purpose” (*“diben awdurdodedig”*) means the purpose of determining whether an offence under regulation 3(1) or 3(2) has been or is being committed, or any requirement of a compliance notice, a stop notice or an enforcement undertaking under these Regulations has been, or is being contravened;

“compliance notice” (*“hysbysiad cydymffurfio”*) has the meaning given by paragraph 1(1)(b) of the Schedule;

“enforcement undertaking” (*“ymgymeriad gorfodaeth”*) has the meaning given by paragraph 17 of the Schedule;

“microbead” (*“microbelen”*) means any water-insoluble solid plastic particle of less than or equal to 5mm in any dimension;

(1) Section 140(3)(c) was amended by S.I. 1999/1108. By virtue of S.I. 1999/672, article 2 and Schedule 1, and section 162 of, and paragraph 30 of Schedule 11 to the Government of Wales Act 2006, subject to certain exceptions, the powers under section 140 are now exercisable by the Welsh Ministers in relation to Wales.

(2) Section 36(2) was amended by the Enterprise Act 2016, section 21(1), (2)(f); section 42(6) was amended by S.I. 2015/664; section 49(1) was amended by S.I. 2015/664.

“plastic” (*plastig*) means a synthetic polymeric substance that can be moulded, extruded or physically manipulated into various solid forms and that retains its final manufactured shape during use in its intended applications;

“the regulator” (*y rheoleiddiwr*), for the purposes of the enforcement of an offence under regulation 3(1), 3(2) or 10(1) means, in relation to any place at which a rinse-off personal care product is manufactured or supplied, the local authority with responsibility for the area in which the place is situated;

and for this purpose “local authority” (*awdurdod lleol*) means a county or county borough council constituted under section 21 of the Local Government Act 1972;

“rinse-off personal care product” (*cynmyrch gofal personol i’w rinsio i ffwrdd*) means any substance, or mixture of substances, manufactured for the purpose of being applied to any relevant human body part in the course of any personal care treatment, by an application which entails at its completion the prompt and specific removal of the product (or any residue of the product) by washing or rinsing with water, rather than leaving it to wear off or wash off, or be absorbed or shed, in the course of time;

and for this purpose—

- (a) a “personal care treatment” (*triniaeth gofal personol*) means any process of cleaning, protecting or perfuming a relevant human body part, maintaining or restoring its condition or changing its appearance; and
- (b) a “relevant human body part” (*rhan berthnasol o’r corff dynol*) is—
 - (i) any external part of the human body (including any part of the epidermis, hair system, nails or lips);
 - (ii) the teeth; or
 - (iii) mucous membranes of the oral cavity;

“stop notice” (*hysbysiad stop*) has the meaning given by paragraph 9(2) of the Schedule;

“supply”, (*cyflenwi*) in relation to a rinse-off personal care product, means supply by way of sale or its presentation as a promotional prize or gift in the course of a business;

“third party undertaking” (*ymgymeriad trydydd parti*) has the meaning given by paragraph 3(1) of the Schedule;

“Wales” (*Cymru*) has the meaning given under section 158 of the Government of Wales Act 2006.

PART 2

Offences

Offences

3.—(1) A person who, in the manufacture of any rinse-off personal care product, uses microbeads as an ingredient of that product is guilty of an offence.

(2) A person who supplies, or offers to supply, any rinse-off personal care product containing microbeads is guilty of an offence.

(3) A person guilty of an offence under paragraph (1) or (2) is liable on summary conviction to a fine.

Defence of due diligence for suppliers

4.—(1) Subject to paragraphs (2) and (4), in proceedings for an offence under regulation 3(2) it is a defence for a person (“P”) to show that P took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) P may not rely on a defence under paragraph (1) which involves a third party allegation unless P has—

- (a) served a notice in accordance with paragraph (3); or
- (b) obtained the leave of the court.

(3) The notice must—

- (a) give any information in P’s possession which identifies or assists in identifying the person who—
 - (i) committed the act or default; or
 - (ii) supplied the information on which P relied; and
- (b) be served on the person bringing the proceedings not less than 7 clear days before the hearing of the proceedings.

(4) P may not rely on a defence under paragraph (1) which involves an allegation that the commission of the offence was due to reliance on information supplied by another person unless it was reasonable for P to have relied upon the information, having regard in particular—

- (a) to the steps that P took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether P had any reason to disbelieve the information.

(5) In this regulation, “third party allegation” means an allegation that the commission of the offence was due—

- (a) to the act or default of another person; or

- (b) to reliance on information supplied by another person.

Time limit for the prosecution of offences

5.—(1) Any information relating to an offence under regulation 3 or 10 that is triable by a magistrates' court may be so tried if it is laid within twelve months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.

(2) No proceedings are to be brought more than three years after the commission of the offence.

PART 3

Enforcement and Civil Sanctions

Enforcement

6.—(1) The regulator may authorise any person to exercise, for an authorised purpose and in accordance with the terms of the authorisation, any of the powers specified in regulation 8 and 9, if that person appears to the regulator suitable to exercise them.

(2) An authorisation under paragraph (1) must be in writing.

(3) In this Part, “enforcement officer” means a person authorised under paragraph (1).

Civil sanctions

7. The Schedule (civil sanctions) has effect for the purpose of the enforcement of an offence under regulation 3(1), 3(2) or 10(1).

Enforcement Officer Powers

8.—(1) The powers which an enforcement officer may be authorised to exercise are—

- (a) to make such examination and investigation as may in any circumstances be necessary;
- (b) to require any person whom an enforcement officer has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (a) above to answer (in the absence of persons other than a person nominated by that person to be present and any persons whom the authorised person may allow to be present) such questions as the enforcement officer thinks fit to ask and to sign a declaration of the truth of their answers; and

- (c) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which it is necessary for the enforcement officer to see for the purposes of an examination or investigation under paragraph (a) above and to inspect and take copies of, or of any entry in, the records.

(2) Nothing in this section shall be taken to compel the production by any person of a document of which that person would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court.

Powers of entry and examination etc.

9.—(1) The powers which an enforcement officer may be authorised to exercise are—

- (a) to enter at any reasonable time any premises (other than premises used wholly or mainly as a dwelling) which the enforcement officer has reason to believe it is necessary to enter for an authorised purpose;
- (b) when entering any premises under sub-paragraph (a)—
 - (i) to be accompanied by another enforcement officer; and
 - (ii) to bring any equipment or materials required for the authorised purpose in question;
- (c) on entering any premises under sub-paragraph (a)—
 - (i) to exercise the powers in regulation 8(2); and
 - (ii) to take such measurements and photographs and make such recordings as the enforcement officer considers necessary for the purpose of any such examination or investigation.
- (d) as regards any premises which an enforcement officer has power to enter under sub-paragraph (a), to direct that those premises or any part of them, or anything in them, be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of examination or investigation under sub-paragraph (c);
- (e) to take any samples, or cause samples to be taken, of any articles or substances found in or on any premises which an enforcement officer has power to enter under sub-paragraph (a), and to cause any such articles or substance to be analysed or tested;

- (f) in the case of any such sample, to take possession of it and to retain it for so long as is necessary for all or any of the following purposes—
 - (i) to examine it, and subject it to any process or test, or cause it to be examined;
 - (ii) to ensure that it is not tampered with before the examination is completed;
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations.

(2) Except in an emergency, where an enforcement officer proposes to enter any premises and—

- (a) entry has been refused or the enforcement officer apprehends on reasonable grounds that entry is likely to be refused, and
- (b) the enforcement officer apprehends on reasonable grounds that the use of reasonable force may be necessary to effect entry,

any entry onto those premises by virtue of paragraph (1)(a) may only be effected under the authority of a warrant.

(3) Nothing in paragraph (1)(c)(iii) compels the production by a person of any documents of which that person would on grounds of legal professional privilege be entitled to withhold production on an order for disclosure in an action in the County Court or High Court.

(4) An enforcement officer may only exercise the powers in paragraph (1) in the reasonable belief that an offence under regulation 3 has been or is being committed.

(5) An enforcement officer seeking to exercise a power under paragraph (1) must produce evidence of identity and authority if requested by a person who is, or appears to be—

- (a) a supplier of a rinse-off personal care product or an employee of such a supplier;
- (b) a manufacturer of a rinse-off personal care product or an employee of such a manufacturer; or
- (c) the owner or occupier of any premises in which the enforcement officer seeks to exercise the power concerned.

Offences

10.—(1) A person commits an offence if in response to powers exercised under regulations 8 and 9 that person—

- (a) fails to supply an enforcement officer with any information, documents or records requested;
 - (b) gives false or misleading information to an enforcement officer; or
 - (c) intentionally obstructs an enforcement officer.
- (2) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine.

Publication of enforcement action

11.—(1) Where the regulator imposes a civil sanction under these Regulations in relation to an offence under regulation 3 or 10, the regulator must from time to time publish—

- (a) the cases in which the civil sanction has been imposed;
- (b) where the civil sanction is a variable monetary penalty or compliance notice, the cases in which a third party undertaking has been accepted; and
- (c) the cases in which an enforcement undertaking has been entered into.

(2) In paragraph (1)(a), the reference to cases in which the civil sanction has been imposed does not include cases where the sanction has been imposed but overturned on appeal.

(3) This regulation does not apply in cases where the regulator considers that publication would be inappropriate.

PART 4

Guidance

Guidance

12.—(1) The regulator must publish guidance about its use of civil sanctions under these Regulations in relation to an offence under regulation 3 or 10.

(2) In the case of guidance relating to a variable monetary penalty, compliance notice or stop notice, the guidance must contain the relevant information set out in paragraph (3).

(3) The relevant information referred to in paragraph (2) is information as to—

- (a) the circumstances in which the requirement is likely to be imposed;
- (b) the circumstances in which it may not be imposed;
- (c) rights to make representations and rights of appeal; and

- (d) in the case of a variable monetary penalty, the matters likely to be taken into account by the regulator in determining the amount of the penalty (including any discounts for voluntary reporting by any person of that person's non-compliance).

(4) The regulator must revise the guidance where appropriate.

(5) The regulator must consult such persons as it considers appropriate before publishing any guidance or revised guidance under this regulation.

(6) The regulator must have regard to the guidance or revised guidance in exercising its functions.

Additional guidance

13.—(1) Guidance under section 64 of the 2008 Act relating to the use of non-compliance penalties and enforcement recovery costs must (in addition to the matters specified in section 64(2)) specify—

- (a) the circumstances in which they may not be imposed;
- (b) matters to be taken into account in determining the amount involved; and
- (c) rights of appeal.

(2) In this regulation, “non-compliance penalty” has the meaning given by paragraph 24(1) of the Schedule.

PART 5

Review

Review

14.—(1) The Welsh Ministers must—

- (a) as soon as reasonably practicable after the end of the period of three years from the date on which these Regulations come into force carry out a review of the operation of the provisions in Part 3 (Enforcement and Civil Sanctions) and the Schedule;
- (b) from time to time carry out a review of the regulatory provision contained in these Regulations (including Part 3 and the Schedule); and
- (c) publish a report setting out the conclusions of any review.

(2) In the case of a review under paragraph (1)(a)—

- (a) section 67 of the 2008 Act requires that the review must in particular consider whether the

provision has implemented its objectives efficiently and effectively;

- (b) the Welsh Ministers, in conducting the review, must consult such persons as the Welsh Ministers consider appropriate; and
- (c) the Welsh Ministers must lay a copy of the report under paragraph (1)(c) before the National Assembly for Wales.

Minister for Environment, under authority of the
Cabinet Secretary for Energy, Planning and Rural
Affairs, one of the Welsh Ministers.

Date

THE SCHEDULE

Regulations 2, 7, 13(2) and 14(1)

Civil Sanctions

PART 1

Variable Monetary Penalties and Compliance Notices

Imposition of a variable monetary penalty or compliance notice

1.—(1) In relation to an offence under regulation 3(1), 3(2) or 10(1) the regulator may by notice impose—

- (a) a requirement to pay a monetary penalty to the regulator of such amount as the regulator may determine (“a variable monetary penalty”); or
- (b) a requirement to take such steps as the regulator may specify, within such period as it may specify, to secure that the offence does not continue or recur (“a compliance notice”).

(2) Before doing so the regulator must be satisfied beyond reasonable doubt that the person has committed the offence.

(3) A requirement under sub-paragraph (1)(a) or (b) may not be imposed on a person on more than one occasion in relation to the same act or omission.

(4) For the offences contained in regulation 3 or 10(1)(a) a variable monetary penalty must not exceed the lesser of 10% of the annual turnover of the business or £5000.

(5) For the offences contained in regulation 10(1)(b) or 10(1)(c) a variable monetary penalty must not exceed the lesser of 10% of the annual turnover of the business or £20,000.

(6) Before serving a notice relating to a variable monetary penalty on a person, the regulator may require the person to provide such information as is reasonable for the purpose of establishing the amount of any financial benefit arising as a result of that offence.

Notice of intent

2.—(1) Where the regulator proposes to serve a variable monetary penalty or a compliance notice on a

person, the regulator must serve on that person a notice of what is proposed (a “notice of intent”).

(2) The notice of intent must include—

- (a) the grounds for the proposed compliance notice or variable monetary penalty;
- (b) the requirements of the proposed compliance notice and, in the case of a penalty, the amount to be paid; and
- (c) information as to—
 - (i) the right to make representations and objections within 28 days beginning with the day on which the notice of intent was received;
 - (ii) the circumstances in which the regulator may not impose the variable monetary penalty or compliance notice.

(3) A person on whom a notice of intent is served may, within 28 days beginning with the day on which the notice was received, make representations and objections to the regulator in relation to the proposed imposition of a variable monetary penalty or compliance notice.

Third party undertakings

3.—(1) A person on whom a notice of intent is served may offer an undertaking as to action to be taken by that person (including the payment of a sum of money) to benefit any third party affected by the offence (a “third party undertaking”).

(2) The regulator may accept or reject any such third party undertaking.

Final notice

4.—(1) After the end of the period for making representations and objections, the regulator must decide whether—

- (a) to impose the requirements in the notice of intent, with or without modifications; or
- (b) to impose any other requirement that the regulator has power to impose under this Part.

(2) Where the regulator decides to impose a requirement, the notice imposing it (the “final notice”) must comply with paragraph 5, in the case of a variable monetary penalty, or paragraph 6, in the case of a compliance notice.

(3) The regulator may not impose a final notice on a person where the regulator is satisfied that the person would not, by reason of any defence, be liable to be convicted of the offence to which the notice relates.

(4) The regulator must take into account any third party undertaking that it accepts in deciding—

- (a) whether or not to serve a final notice; and
- (b) the amount of any variable monetary penalty it imposes.

Contents of final notice: variable monetary penalty

5. A final notice for a variable monetary penalty must include information as to—

- (a) the grounds for imposing the penalty;
- (b) the amount to be paid;
- (c) how payment may be made;
- (d) the period within which payment must be made, which must be not less than 28 days;
- (e) rights of appeal; and
- (f) the consequences of failing to comply with the notice.

Contents of final notice: compliance notice

6. A final notice relating to a compliance notice must include information as to—

- (a) the grounds for imposing the notice;
- (b) what compliance is required and the period within which it must be completed;
- (c) rights of appeal; and
- (d) the consequences of failing to comply with the notice.

Appeals against final notice

7.—(1) The person receiving the final notice may appeal against it.

(2) The grounds for appeal are—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) in the case of a variable monetary penalty, that the amount is unreasonable;
- (d) in the case of a compliance notice, that the nature of the requirement is unreasonable;
- (e) that the decision is unreasonable for any other reason;
- (f) any other reason.

Criminal proceedings

8.—(1) If—

- (a) a variable monetary penalty or compliance notice is served on any person, or
- (b) a third party undertaking is accepted from any person,

that person may not at any time be convicted of the offence in respect of the act or omission giving rise to the variable monetary penalty, compliance notice or third party undertaking except in a case referred to in sub-paragraph (2).

(2) The case referred to in sub-paragraph (1) is a case where—

- (a) a compliance notice is imposed on a person or a third party undertaking is accepted from a person;
- (b) no variable monetary penalty is imposed on that person; and
- (c) that person fails to comply with the compliance notice or third party undertaking.

PART 2

Stop Notices

Stop notices

9.—(1) The regulator may serve a stop notice on any person in a case falling within sub-paragraph (3) or (4).

(2) A “stop notice” is a notice prohibiting a person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.

(3) A case falling within this sub-paragraph is a case where the regulator reasonably believes that—

- (a) the person is carrying on the activity;
- (b) the activity as carried on by that person is causing, or presents a significant risk of causing, harm to the environment (including the health of animals); and
- (c) the activity as carried on by that person involves or is likely to involve the commission of an offence under regulation 3(1) or (2).

(4) A case falling within this sub-paragraph is a case where the regulator reasonably believes that—

- (a) the person is likely to carry on the activity;
- (b) the activity as likely to be carried on by that person will cause, or will present a significant risk of causing, harm to the environment (including the health of animals); and
- (c) the activity as likely to be carried on by that person will involve or will be likely to involve the commission of an offence under regulation 3(1) or (2).

(5) The steps referred to in sub-paragraph (2) must be steps to remove or reduce the harm or risk of harm to the environment (including the health of animals).

Contents of a stop notice

10. A stop notice must include information as to—

- (a) the grounds for serving the notice;
- (b) the steps the person must take to comply with the stop notice;
- (c) rights of appeal; and
- (d) the consequences of non-compliance.

Appeals against stop notices

11.—(1) The person on whom a stop notice is served may appeal against the decision to serve it.

(2) The grounds for appeal are—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the decision was unreasonable;
- (d) that any step specified in the notice is unreasonable;
- (e) that the person has not committed the offence and would not have committed it had the stop notice not been served;
- (f) that the person would not, by reason of any defence, have been liable to be convicted of the offence had the stop notice not been served;
- (g) any other reason.

Completion certificates

12.—(1) Where, after service of a stop notice, the regulator is satisfied that the person has taken the steps specified in the notice, the regulator must issue a certificate to that effect (“a completion certificate”).

(2) The stop notice ceases to have effect on the issue of a completion certificate.

(3) The person on whom the stop notice is served may at any time apply for a completion certificate.

(4) The regulator must make a decision as to whether to issue a completion certificate, and give written notice of the decision to the applicant, within 14 days of such an application.

Appeals against decision not to issue a completion certificate

13. The person on whom the stop notice was served may appeal against a decision not to issue a

completion certification on the grounds that the decision—

- (a) was based on an error of fact;
- (b) was wrong in law;
- (c) was unfair or unreasonable;
- (d) was wrong for any other reason.

Compensation

14. The regulator must compensate a person for loss suffered as the result of the service of a stop notice or the refusal of a completion certificate if—

- (a) a stop notice is subsequently withdrawn or amended by the regulator because the decision to serve it was unreasonable or any step specified in the notice was unreasonable;
- (b) the person successfully appeals against the stop notice and the First-tier Tribunal finds that the service of the notice was unreasonable; or
- (c) the person successfully appeals against the refusal of a completion certificate and the First-tier Tribunal finds that the refusal was unreasonable.

Appeal against compensation decision

15. A person may appeal against a decision not to award compensation or the amount of compensation—

- (a) on the grounds that the regulator's decision was unreasonable;
- (b) on the grounds that the amount offered was based on incorrect facts;
- (c) for any other reason.

Offence

16.—(1) Where a person on whom a stop notice is served does not comply with it within the time limit specified in the notice, the person is guilty of an offence and liable—

- (a) on summary conviction, to a fine, or imprisonment for a term not exceeding twelve months, or both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.

(2) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, the reference in sub-paragraph (1)(a) to twelve months is to be read as a reference to six months.

PART 3

Enforcement Undertakings

Enforcement undertakings

17.—(1) The regulator may accept a written undertaking (an “enforcement undertaking”) given by a person in a case where the regulator has reasonable grounds to suspect that the person has committed an offence under regulation 3(1) or (2).

(2) For the purposes of this Part an “enforcement undertaking” is a written undertaking to take such action as may be specified in the undertaking within such period as may be so specified.

Contents of an enforcement undertaking

18.—(1) An enforcement undertaking must specify—

- (a) action to secure the offence does not recur;
- (b) action (including the payment of a sum of money) to benefit any person affected by the offence; or
- (c) action that will secure benefit to the environment equivalent to restoration of what has been, or is likely to have been, damaged or destroyed by the commission of the offence.

(2) It must specify the period within which the action must be completed.

(3) It must include—

- (a) a statement that the undertaking is made in accordance with this Schedule;
- (b) the terms of the undertaking; and
- (c) information as to how and when the person giving that undertaking is considered to have discharged the undertaking.

(4) The enforcement undertaking may be varied, or the period within which the action must be completed may be extended, if both parties agree in writing.

Acceptance of an enforcement undertaking

19. If the regulator has accepted an enforcement undertaking, then, unless the person from whom the undertaking is accepted has failed to comply with the undertaking or any part of it—

- (a) that person may not at any time be convicted of the offence in respect of the act or omission to which the undertaking relates; and
- (b) the regulator may not impose on that person a variable monetary penalty, a compliance

notice or a stop notice in respect of that act or omission.

Discharge of an enforcement undertaking

20.—(1) If the regulator is satisfied that an enforcement undertaking has been complied with, it must issue a certificate to that effect.

(2) The regulator may require the person who has given the undertaking to provide sufficient information to determine that the undertaking has been complied with.

(3) The person who gave the undertaking may at any time apply for such a certificate.

(4) The regulator must decide whether to issue such a certificate, and give written notice of the decision to the applicant, within 14 days of such an application.

Appeals against decision not to issue a certificate

21. The person to whom the notice is given may appeal against a decision not to issue a certificate on the grounds that the decision—

- (a) was based on an error of fact;
- (b) was wrong in law;
- (c) was unfair or unreasonable;
- (d) was wrong for any other reason.

Inaccurate, misleading or incomplete information

22.—(1) A person who has given inaccurate, misleading or incomplete information in relation to an enforcement undertaking is to be taken not to have complied with it.

(2) The regulator may by notice in writing revoke a certificate issued under paragraph 20 if it was issued on the basis of inaccurate, misleading or incomplete information.

Non-compliance with an enforcement undertaking

23.—(1) If an enforcement undertaking is not complied with, the regulator may either—

- (a) serve a variable monetary penalty notice, compliance notice, non-compliance penalty or stop notice; or
- (b) bring criminal proceedings.

(2) If a person has complied partly but not fully with an enforcement undertaking, that partial compliance must be taken into account in the imposition of any criminal or other sanction on the person.

(3) Criminal proceedings for an offence triable summarily to which an enforcement undertaking

relates may be instituted at any time up to six months from the date on which the regulator notifies the person required to comply with that undertaking of that person's failure to do so.

PART 4

Non-compliance penalties

Non-compliance penalties

24.—(1) If a person fails to comply with a compliance notice or a third party undertaking, the regulator may serve a notice on that person imposing a monetary penalty (a “non-compliance penalty”) in respect of the same offence, irrespective of whether a variable monetary penalty was also imposed in respect of that offence.

(2) The amount of the penalty must be determined by the regulator, and must be a percentage of the costs of fulfilling the remaining requirements of the compliance notice or third party undertaking.

(3) The percentage must be determined by the regulator having regard to all the circumstances of the case and may, if appropriate, be 100%.

(4) The notice must also include information as to—

- (a) the grounds for imposing the non-compliance penalty;
- (b) the amount to be paid;
- (c) how payment must be made;
- (d) the period in which payment must be made, which must not be less than 28 days;
- (e) the right of appeal;
- (f) the consequences of failure to make payment in the specified period; and
- (g) any circumstances in which the regulator may reduce the amount of the penalty.

(5) If the requirements of the compliance notice are complied with or a third party undertaking is fulfilled before the time set for payment of the non-compliance penalty, the penalty is not payable.

Appeals against non-compliance penalties

25.—(1) The person on whom the notice imposing the non-compliance penalty is served may appeal against it.

(2) The grounds of appeal are—

- (a) that the decision to serve the notice was based on an error of fact;
- (b) that the decision was wrong in law;

- (c) that the decision was unfair or unreasonable for any reason;
- (d) that the amount of the penalty was unreasonable;
- (e) any other reason.

PART 5

Administration and Appeals

Withdrawing or amending a notice

26. The regulator may at any time in writing—

- (a) withdraw a notice imposing a variable monetary penalty or a notice imposing a non-compliance penalty, or reduce the amount specified in the notice; or
- (b) withdraw a compliance notice or stop notice, or amend the steps specified, in order to reduce the amount of work necessary to comply with the notice.

Enforcement cost recovery notices

27.—(1) The regulator may serve a notice (an “enforcement cost recovery notice”) on a person on whom a relevant notice has been served requiring that person to pay the costs incurred by the regulator in relation to the imposition of the requirement imposed by the relevant notice up to the time of its imposition.

(2) In sub-paragraph (1), a “relevant notice” means a variable monetary penalty notice, compliance notice or stop notice.

(3) “Costs” include in particular—

- (a) investigation costs;
- (b) administration costs;
- (c) costs of obtaining expert advice (including legal advice).

(4) The enforcement cost recovery notice must specify—

- (a) how payment must be made;
- (b) the amount required to be paid and the period in which payment must be made, which must not be less than 28 days;
- (c) the grounds for imposing the notice;
- (d) the right of appeal; and
- (e) the consequences of a failure to comply with the notice in the specified period.

(5) The person on whom the notice is served may require the regulator to provide a detailed breakdown of the amount.

(6) The person required to pay costs is not liable to pay any costs shown by that person to have been unnecessarily incurred.

Appeals against enforcement cost recovery notices

28. The person required to pay costs may appeal—

- (a) against the decision of the regulator to impose the requirement to pay costs;
- (b) against the decision of the regulator as to the amount of those costs;
- (c) for any other reason.

Power to recover payments

29. The regulator may recover any variable monetary penalty or non-compliance penalty imposed under this Schedule as if payable under a court order.

Appeals: general provisions

30.—(1) An appeal under paragraph 7, 11, 13, 15, 21, 25 or 28 of this Schedule is to the First-tier Tribunal.

(2) All notices (other than stop notices) are suspended pending the determination or withdrawal of the appeal.

(3) The First-tier Tribunal may, in relation to the imposition of a requirement or service of a notice under this Schedule—

- (a) withdraw the requirement or notice;
- (b) confirm the requirement or notice;
- (c) vary the requirement or notice;
- (d) take such steps as the regulator could have taken in relation to the act or omission giving rise to the requirement or notice; or
- (e) remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the regulator.

Explanatory Memorandum to the Environmental Protection (Microbeads) (Wales) Regulations 2018

This Explanatory Memorandum has been prepared by the Department for Economy, Skills and Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary/Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Environmental Protection (Microbeads) (Wales) Regulations 2018.

I am satisfied that the benefits justify the likely costs.

HANNAH BLYTHYN,
MINISTER FOR ENVIRONMENT
18 May 2018

1. Description

The Environmental Protection (Microbeads) (Wales) Regulations 2018 (the 2018 Regulations) ban the manufacture and sale of rinse-off personal care products containing plastic microbeads. This will reduce the release of plastic into the marine environment and lessen harm to marine organisms caused by this form of microplastic.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None.

3. Legislative background

The 2018 Regulations are being made under Section 140 of the Environmental Protection Act 1990 (EPA 1990). Section 140(1) (b) and (c) of the EPA 1990 states the Secretary of State may prohibit the supply and use of a specified substance for the purpose of preventing pollution of the environment or harm to human health or the health of animals and plants.

Under Article 2 of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672) the functions exercisable under section 140 of the EPA 1990 were transferred to the National Assembly for Wales. Those functions were transferred to the Welsh Ministers by virtue of section 162 and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

Civil sanctions are available to the Welsh Ministers by virtue of section 140 (9) of the EPA 1990 and sections 62(1) and paragraph 1 of Schedule 7 to the Regulatory Enforcement and Sanctions Act 2008 (RES Act 2008).

The power is subject to the requirements for consultation under section 59(3) and 60(1) of the RES Act 2008. The power is also subject to the requirements of section 42 of the RES Act 2008 and section 140 of the EPA 1990 as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015/664 Schedule 3(2) paragraph 16(2).

In accordance with Section 59(3) of the RES Act 2008 the Welsh Ministers consulted with the Secretary of State in March 2018, before making an Order under Part 3 of the RES Act 2008.

In accordance with the consultation requirements in section 60(1)(a) of the RES Act 2008 the Welsh Ministers consulted with Welsh Local Authorities in March 2018 in their capacity as the regulator.

In accordance with section 140(6)(b) of the EPA 1990 notices were placed in the London Gazette and Western Mail in April 2018 to inform the public about

the proposed 2018 Regulations and to invite public representation to the Welsh Ministers.

The instrument is an affirmative procedure and subject to approval of the Assembly.

4. Purpose & intended effect of the legislation

The purpose of this legislation is to ban the manufacture and supply of rinse-off personal care products which contain plastic microbeads which evidence shows can pollute and cause harm to the marine environment.

A microbead is a water-insoluble solid plastic particle which measures less than or equal to 5mm in any dimension. These are deliberately added to a variety of rinse-off personal care products and have been in use for many years.

The ban will extend to all rinse-off personal care products containing plastic microbeads, as defined in the Regulations. Rinse-off personal care products include, but are not limited to: products designed for use on the body, skin, hands, feet, nails, face, hair and oral cavity, including to exfoliate, cleanse, lighten or colour, soften skin or hair, remove hair, deodorise or perfume, as well as bath products with personal care properties and dental products.

The ban is intended to:

1. Prevent further harm to marine animals and reduce the level of plastics entering our seas.
2. Protect the marine environment and reduce the risk and severity of possible irreversible effects on food security and human health.
3. Continue to encourage both existing and planned voluntary industry efforts to remove microbeads.
4. Foster consumer confidence products will not cause marine pollution.
5. Set an example for other countries and encourage wider adoption of legislation.

In Wales, we do not have any manufacturers using microbeads in their products. Through delivery of the ban on manufacture and sale, businesses will be supported in adjusting to the changes resulting in as little additional burden on industry as possible.

Context

Welsh Government is committed to implementing an integrated policy-making approach which provides a framework for a clean, healthy, safe, productive and biologically diverse coast and seas. This helps to realise our ambition to improve the health and well-being of the people of Wales as set out in 'Prosperity for All', whilst ensuring more sustainable use of our seas.

Litter is a major issue for our seas and oceans. Welsh Government is committed to taking positive action to reduce the amount of plastic which ends up in our oceans.

The Welsh Government is already doing a lot to reduce and recycle plastic waste through its 'Towards Zero Waste' strategy. Wales leads the UK in recycling and according to an independent study, is ranked second in Europe and third in the world. We recycle 75% of plastic bottles collected from households, compared with the UK as a whole which recycles 57%. The Welsh Government has also commissioned a study to address further ways to increase recycling and reduce littering of key food and drink packaging.

Recently Welsh Government formed the Clean Seas Partnership where stakeholders are currently working to develop and deliver a marine litter action plan for Wales. The principles of the partnership include:

1. Collaboration with UK and global partners to build a strong evidence base of what is effective,
2. A focus on preventative action to address the problem at source,
3. Involvement of communities of place, communities of interest and users of the marine environment in developing and implementing solutions,
4. Integrated working to maximise economic, social and environmental outcomes,
5. Monitor the impact of specific interventions in achieving long term improvements.

Taking positive action to reduce the harmful discharge of microbeads into the sea supports the aims of the Marine Strategy Framework Directive (MSFD)¹. MSFD sets the framework (which is delivered through a UK Marine Strategy) for how our seas are managed sustainably and contributes towards meeting our goal of achieving Good Environmental Status for our seas. This ban will make a positive contribution to protect the marine environment.

The UK Marine Strategy Part One² indicated some problems from marine litter in all regions of UK seas where there are systematic surveys of beach litter density. In addition to this, there is growing evidence the accumulating quantities of litter in our aquatic environments can harm marine ecosystems and affect coastal communities. Smaller items such as microplastic particles can be consumed by marine animals, damaging their health.

The UK Marine Strategy Part Three³ sets out a comprehensive set of existing and planned measures to address marine litter. These measures include the OSPAR Regional Action Plan (RAP) to tackle marine litter⁴. Since 2014, the UK

¹ <http://gov.wales/topics/environmentcountryside/marineandfisheries/marine-fisheries-policy/directives/marine-strategy-framework-directive/?lang=en>

² <https://www.gov.uk/government/publications/marine-strategy-part-one-uk-initial-assessment-and-good-environmental-status>

³ <https://www.gov.uk/government/publications/marine-strategy-part-three-uk-programme-of-measures>

⁴ <https://www.ospar.org/documents?v=34422>

has been working with neighbouring countries and engaging with the cosmetics industry to promote a voluntary phase-out of the use of microplastics in cosmetics and personal care products.

This work led to a recommendation in October 2015 from the European Trade Association for the cosmetics industry, Cosmetics Europe, to voluntarily phase out the use of microbeads added for cleansing and exfoliating purposes. Many cosmetics companies, both large and small, issued public commitments to do so.

In August 2016 the UK Government Environmental Audit Committee's (EAC) inquiry into the environmental impact of microplastics was published. It included a recommendation to introduce legislation to ban the use of microbeads in cosmetic and personal care products.

Evidence

In 2016, the results of a five year study on the impact of microplastics in the marine environment were published⁵. The study was conducted by the University of Plymouth and showed microplastics ingested by marine organisms can cause harm either directly or by transporting other chemical contaminants into the systems of marine organisms. These findings reinforced the growing body of evidence of harm caused to marine organisms by ingestion of microplastics.

Microbeads are an avoidable source of marine pollution. In the UK it is estimated up to 680 tonnes of plastic microbeads are used in personal care products every year, billions of which are being washed into drainage systems and entering our seas. Microbeads accumulate in the marine environment because they do not biodegrade and because it is considered impossible to recover them once released.

In the cosmetics industry, there are suitable, economically feasible alternatives for plastic microbeads including silica, salt and ground seed kernels. Scientific evidence suggests these alternatives do not have negative impacts to the environment⁶.

Further information on why microbeads in cosmetics as an avoidable source of marine pollution, should be minimised, is in Part Two of this Explanatory Memorandum – the Regulatory Impact Assessment.

Public interest

The increased understanding and awareness of microbeads and the harm they cause to the marine environment has resulted in substantial public interest in

⁵<http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&ProjectID=17683&FromSearch=Y&Publisher=1&SearchText=5416&SortString=ProjectCode&SortOrder=Asc&Paging=10#Description>

⁶ <http://ec.europa.eu/environment/marine/good-environmental-status/descriptor-10/pdf/MSFD%20Measures%20to%20Combat%20Marine%20Litter.pdf>

reducing marine litter, microplastics and microbead pollution in the oceans, for example with the submission of public petitions around the issue of marine litter, for example, in January 2016, Greenpeace launched a petition calling for the UK Government to ban microbeads from cosmetics. This petition received over 385,000 signatures.

The voluntary action by industry, along with increasing pressure from consumers, has been successful to the extent that more than 70% of producers have already removed microbeads from their products. However, introducing a legislative ban will ensure consistency in understanding of what is meant by “microbead” and as a result will ensure all relevant products are free from microbeads.

International support

The Welsh Ministers together with counterparts across the UK took the decision to introduce legislation to bring in a national ban on the manufacture and sale of rinse-off personal care products containing microbeads, while continuing to engage with other countries to support the development of similar bans internationally.

Globally there is widespread support for a ban on plastic microbeads with many countries already having implemented legislation or in the process of implementing a ban such as, Canada, the United States of America, Australia, Taiwan, South Korea, New Zealand, Italy and India. Government Ministers in Austria, Belgium, Sweden, Luxembourg and the Netherlands have also called for an EU-wide ban on the use of microbeads. The EU Commission held a public consultation on policy options to reduce microplastics entering the marine environment which showed public support for a ban on microbeads in cosmetics⁷. France and Sweden have both introduced bans to prohibit rinse-off cosmetics containing microplastics in 2018. Belgium has notified its own draft plan to voluntarily phase out microplastics in all consumer products by 2019.

The Welsh Government worked collaboratively with all UK administrations to adopt a common approach to this ban, through joint development of UK consultation proposals and applied a consistent approach, where appropriate for Wales, in the 2018 Welsh Regulations.

Consideration of impact on business and trade

There are estimated to be around 300 cosmetics manufacturers in the UK. However, The UK Cosmetics, Toiletries and Perfumery Association has indicated there are no manufacturing businesses in Wales who use plastic microbeads in their products. The majority of Welsh businesses are small and tend to deal in organic and artisanal products.

⁷ https://ec.europa.eu/info/consultations/public-consultation-investigating-options-reducing-releases-environment-microplastics_en

The 2018 Regulations are therefore not expected to have any impact on manufacturers in Wales. However, the ban on manufacture is necessary to provide a level playing field for industry.

The wider UK cosmetics industry has already taken voluntary steps to remove plastic microbeads from cosmetics and personal care products with over 72% of UK manufacturers no longer using them in their manufacturing process. Further, as noted above, a number of other countries are adopting similar bans and there is widespread public support for phasing out plastic microbeads from cosmetics and personal care products.

In terms of origin, 78% of beauty product imports come from other EU countries or from North America. The US are currently introducing a microbead ban⁸, and certain European countries are exploring the possibility of banning microbeads. Moreover, industry statements⁹ on phasing out microbeads generally refer to global removal. This suggests a very small percentage of imports are likely to be affected by the ban.

With the action already being taken by the industry and lack of Welsh manufacturers the impact on Welsh businesses and retailers would be minimal as non-compliant stocks will naturally diminish as supply is exhausted. Full details of the impact on business and trade are contained within the Impact Assessment.

Timing of the ban and legislation coming in to force

The proposed UK ban was first announced in September 2016 and the UK wide consultation launched in December 2016. The Welsh Government launched a further consultation in October 2017 stating the ban on the manufacture and sale of personal care rinse-off products containing plastic microbeads would be effective from 30 June 2018 if that was, ultimately, the decision reached when all consultation responses were considered.

The public consultation documents issued by Welsh Government in October 2017 encouraged businesses to prepare and adapt their business operations in readiness for the proposed ban, if that was the decision reached when all consultation responses were considered. Further, at the time the ban is introduced in Wales, Welsh businesses selling products will have been given over one year to prepare for the introduction of the ban. In addition, there has already been widespread voluntary action from the cosmetic industry to phase out microbeads in the UK, however, we understand there may be wholesalers and retailers who supply and stock such products.

In addition, the ban on microbeads has received significant media attention and the Welsh Government is confident retailers will be aware of the ban coming into effect and impacts of the ban on businesses will therefore be minimised.

⁸ <https://www.congress.gov/114/plaws/publ114/PLAW-114publ114.pdf>

⁹ <https://www.beatthemicrobead.org/en/industry>

Once the ban is in place, businesses will be supported by guidance focussed on bringing business into compliance with the law and prevent harm being caused to the marine environment. Such guidance will assist manufacturers, suppliers, retailers and the public in understanding the ban and the products falling within the ban, the enforcement and civil sanctions regime.

Enforcement

The 2018 Regulations will be enforced by Welsh Local Authorities in accordance with published guidance.

The primary aims of the enforcement proposals are to bring people into compliance and prevent harm being caused to the marine environment.

It will be a criminal offence for anyone to manufacture, sell or offer to supply any rinse-off cosmetic or personal care products which contain plastic microbeads in Wales. There are also some related offences, for example, it will be an offence to fail to comply with a stop notice or fail to provide certain information within a reasonable period of being requested in writing to do so.

The 2018 Regulations introduce an enforcement regime which includes civil sanctions and provides a mix of enforcement notices and monetary penalties. Civil sanctions will allow the regulator to distinguish between those who are striving to comply and those who disregard the law. This flexibility will enable the regulator to impose a range of sanctions depending on the circumstances of the offence.

The 2018 Regulations provide the following enforcement tools for regulators as a result of non-compliance:

Enforcement undertakings: These enable a person, which a regulator reasonably suspects of having committed an offence, to give an undertaking (a promise) to a regulator to take one or more corrective actions set out in the undertaking.

Third party undertaking: These enable a person who has received a regulator's notice of intent to impose a variable monetary penalty, for example, to give a commitment to take action to benefit a third party affected by the non-compliance.

Variable monetary penalty (VMP): A requirement to pay a monetary penalty of an amount determined by the regulator reflecting the circumstances of the offence.

Compliance notice: A requirement to take specified steps within a stated period to ensure an offence does not continue or happen again.

Notice of intent: A notice of what action is proposed; is issued before imposing a variable monetary penalty or compliance notice.

Final notice: A final notice of what action is proposed.

Stop notice: A requirement for a person to stop undertaking an activity described in the notice until it has taken steps to come back into compliance.

Non-compliance penalty: Failure to comply with an undertaking or a compliance notice will result in a non-compliance penalty.

Enforcement costs recovery notice: A notice detailing what costs the regulator seeks as reimbursement for investigation and administration.

Variable Monetary Penalties

Where an offence has been committed, enforcement officers will be able to impose a variable monetary penalty. The parameters the regulator will consider when setting a proportionate level of penalty are:

- the size of the business;
- scale of the offence;
- the impact on the environment;
- the level of financial benefit gained from the offence; and
- any other relevant matters.

Variable monetary penalties will be considered on a case-by-case basis but guidance will be published to establish guidelines for the regulator when determining the level of penalty to be applied, within the maximum penalty amount.

- Non-compliance penalty – a maximum of the lesser of 10% of the annual turnover of the business and £5,000.
- Failing to provide information or documentation for the purpose of determining whether certain offences have been or are being committed, or any requirement of a compliance notice, a stop notice or an enforcement undertaking has been, or is being contravened; – maximum penalty is the lesser of 10% of the annual turnover of the business and £20,000.

Should businesses fail to comply with a stop notice or compliance notice (where a VMP is not also imposed on a person) the regulator will have the power to instigate criminal proceedings.

Failure to comply with a compliance notice will be punishable on conviction by a fine to be determined by the Magistrates Court.

Failure to comply with a stop notice will be punishable by either imprisonment of up to twelve months or fine to be determined by the Magistrates Court.

Compliance notices and stop notices will only be issued as a last resort, where other approaches have failed or where breach of the ban is judged to be deliberate or significant in scale.

The Justice Impact Assessment completed showed there would be minimal impact on the justice system.

All appeals relating to civil sanctions are to the First-tier Tribunal.

Other impact assessments

The following impact assessments have also been completed and showed there would be minimal or no impact across them all: Children's Rights, Equality and Human Rights, Privacy, Competition, Rural Proofing and Welsh Language.

EU Law

As noted above, the purpose of drafting the 2018 Regulations is to reduce the growth in marine litter and protect the marine environment. The severity of the environmental impact of microbeads, specifically on the marine environment, has been outlined above. This includes the outcome of a five year study in 2016 which identified the harm caused to marine organisms by the ingestion of microplastics, and acknowledged their use as an avoidable source of marine pollution. It is considered therefore the environmental reasons relied upon in making the 2018 Regulations are sufficient and legitimate to justify the prohibition on the use of microbeads as an ingredient in the manufacture of rinse-off personal care products, and the sale of such products.

When developing the 2018 Regulations, Welsh Government worked with other UK Administrations to consider how to tackle the impact of microplastics on the marine environment, and have engaged with academic institutions and the cosmetic industry to try and identify what measures could be adopted to address this issue. As a result of such engagement it was considered a ban on the manufacture and selling of rinse-off personal care products containing microbeads was the most proportionate and rational mean to achieve the aim of reducing levels of marine litter in all areas of the UK seas, particularly in relation to the Welsh marine area. It was considered no lesser measure would achieve the aims sought, and the policy adopted also reflects the approach assumed in a number of countries around the world, as identified above.

The policy has gained support from the general public, as evidenced by consultation feedback. A broad and timely consultation process was undertaken to garner the views of the general public, and those likely to be impacted by the ban both on a UK wide and Welsh basis as set out below. In particular, the public consultation documents issued by Welsh Government in October 2017 encouraged businesses to prepare and adapt their business operations in readiness for the proposed ban (if that was, ultimately, the decision reached when all consultation responses were considered).

Further, and as noted above, support for the ban has been received from the

cosmetic industry. In October 2015 the European Trade Association for the cosmetics industry, Cosmetics Europe, supported a voluntary phase out of the use of microbeads added for cleansing and exfoliating purposes. In addition, many cosmetics companies, both large and small, have issued public commitments to similarly phase out the use of microbeads. The Welsh Government therefore consider, as a result of the voluntary phasing out of the manufacture of such products and a significant public awareness of the ban, any businesses which might be affected by these proposals in Wales have been afforded adequate time to adjust to the changes in the law.

Welsh Government believes the measures, adopted in the 2018 Regulations, are proportionate and will result in benefits including:

- reducing growth in marine litter and the amount of plastics entering our seas;
- protecting the marine environment; and
- working towards achieving Good Environmental Status for our seas.

These benefits, to be achieved through the ban on the manufacture and sale of personal care products containing microbeads, outweigh any possible negative impacts which may result from the restrictions imposed by the 2018 Regulations.

Conclusion

The intervention is designed to protect the marine environment from further pollution, foster consumer confidence the products they buy will not harm the environment, and support the cosmetics industry by setting a level playing field while ensuring a suitable timescale for implementation to minimise impact on the industry. It will also set an example for other countries and encourage wider adoption of legislation.

A Regulatory Impact Assessment was carried out on the UK wide proposals and updated when the English Regulations were made. This document is at Annex 1. This UK-wide assessment is the most up to date and is being used for the purposes of the Welsh Regulations. The following is a summary of the likely impact in Wales.

Impact on enforcement bodies

The impact on the public sector constitutes minimal additional regulatory burden with respect to enforcement of the ban as outlined in the Statutory Instrument. Local authorities are to be responsible for ensuring businesses compliance with the ban on manufacture and sale of rinse-off personal care products containing plastic microbeads. A small amount of additional resource burden is anticipated in the form of additional time for Local Authority officers and administration of sanctions where appropriate. The financial implications of this ban for Wales are largely with enforcement. The costs for Wales have been calculated from the UK Impact Assessment on a pro-rata basis. The estimated costs to the 22 Welsh Local Authorities to enforce this ban are £0 - £13,824 over ten years. The breakdown of costs is as follows:

Summary of enforcement costs (pro-rata for Wales from UK assessment costs)

	Low estimate	Best estimate	High estimate
Familiarisation cost (year 1) – One-off costs	£0	£4,400	£11,000
Annual cost (years 1-3)	£0	£76 (£228 over 3 years)	£764 (£2,292 over 3 years)
Annual cost (years 4-10)	£0	£76 (£532 over 7 years)	£76 (£532 over 7 years)

The expected level of non-compliance is expected to be low given the existing voluntary actions by industry and will therefore place little extra burden on Local Authorities. Any potential non-compliance issues will be short-lived as the supply becomes exhausted as non-compliant stocks cease to be manufactured.

Impact on businesses

The legislation applies to activities which are undertaken by businesses in the toiletries and cosmetics sector.

While the extent of microbead use by small businesses is difficult to determine, engagement with the UK Cosmetics, Toiletries and Perfumery Association has indicated there are no manufacturing businesses in Wales who use microbeads in their products. The 2018 Regulations are therefore not expected to have any impact on manufacturers in Wales.

In relation to businesses selling products, Welsh Government has carried out extensive consultation, and proposals to introduce a ban across the UK have been well publicised. Retailers have had over a year to adjust to the ban proposals and will also be supported through guidance, following implementation of the ban on 30 June 2018. Impacts are considered to be minimal on retailers in Wales. Further detail can be found in section 4 above.

Benefits

The microbead ban is expected to have a positive impact on the marine environment. There are other stresses experienced by marine organisms including other forms of historical pollution and ocean acidification. Adding stresses from microbeads increases the overall risk to marine ecosystems.

The UK Impact Assessment identifies the business and environmental benefits which are likely to be generated by the ban on plastic microbeads, however, these benefits could not be quantified and no further evidence was provided during either the UK or Welsh consultations, however, they are expected to be at least as high as the modest costs of the measure.

Monitoring and review

The 2018 Regulations will be subject to regular review. The obligations are set out in regulation 14 and include (i) a review of the operation of the provisions in Part 3 (Enforcement and Civil Sanctions) and Schedule within 3 years from the date the 2018 Regulations come into force, as required by section 67 of the RES Act 2008 . The Welsh Ministers will lay a copy of the report setting out conclusions of any review before the National Assembly for Wales.

5. Consultation

20 December 2016 – 28 February 2017 – UK wide consultation undertaken jointly by all four UK Governments – 12 weeks

This was made publically available at:

<https://consult.defra.gov.uk/marine/microbead-ban-proposals/>

The consultation set out proposals to ban the manufacture and sale of cosmetics and personal care products containing microbeads in the UK (including all devolved administrations). It explained the ban would apply to solid microbeads less than 5mm in size in every dimension which are used as an ingredient in rinse-off cosmetics and personal care products. It set out timescales for introducing the ban across the UK and stated the devolved administrations would introduce the ban according to their own legislative processes.

The consultation asked for comments on the proposals, including specific questions on scope; potential exemptions; timescales; compliance monitoring and enforcement; costs to industry, impact on imports, and environmental risks of alternatives to plastic microbeads. It also raised awareness of the potential

for those with an interest to make representations on the legislation when it was notified prior to being made.

Proposals for a UK wide ban were drawn up following considerable engagement between all four UK administrations, key stakeholders including cosmetic companies, non-governmental organisations and those with specific expertise in marine pollution.

16 October 2017 to 8 January 2018 – Welsh Government public consultation – 12 weeks

Welsh Government conducted a further public consultation on the wider enforcement and implementation details for the ban specifically in Wales.

This consultation was made publicly available at:

<https://consultations.gov.wales/consultations/banning-manufacture-and-sale-cosmetics-and-personal-care-products-containing-plastic>.

The consultation set out a number of questions relating to proposals for a civil sanctions regime which would include a mixture of compliance notices and variable monetary penalties to be enforced by the local authorities trading standards services. The consultation also tested the level of variable monetary penalties.

The Welsh Government received 62 responses and widespread support for the enforcement and implementation proposals. The summary of responses can be found here: <https://consultations.gov.wales/consultations/banning-manufacture-and-sale-cosmetics-and-personal-care-products-containing-plastic>

29 January 2018 – EU Technical Services Directive and World Trade Organisations notifications

The draft statutory instrument was notified to the European Union (EU) under the Technical Standards Directive (TSD), as well as to the World Trade Organization (WTO) under the Technical Barriers to Trade Agreement (TBTA).

DEFRA carried out their TSD, WTO-TBT and EPA notifications ahead of the finalisation of the Welsh Government's draft 2018 Regulations. Following comments received during the DEFRA notifications the definition of plastic was amended in the Welsh Government's draft 2018 Regulations. The revised definition is included within the Welsh Government's Regulations to ensure consistency of approach across the UK.

In the 2018 Regulations "plastic" is defined as meaning a synthetic polymeric substance that can be moulded, extruded or physically manipulated into various solid forms and which retains its final manufactured shape during use in its intended applications.

The Commission provided a response to the TSD notification and noted they have requested the European Chemicals Agency (ECHA), in accordance with

Article 69(1) of the REACH Regulation, to prepare an Annex XV dossier in view of a possible restriction concerning the use of synthetic water-insoluble polymers of 5 mm or less in any dimension (i.e. microplastic particles) which are intentionally added to products of any kind. ECHA entered the relevant intention into the Registry of Intentions on 17 January 2018.

The Commission note if the UK authorities proceed to adopt the notified drafts, the Commission expects them to consider the adopted national measures as provisional and to take into account the final outcome of the ongoing REACH restriction procedure.

These comments have been noted and will be considered at the time the final outcome is available.

March 2018 - RES Act 2008 consultation requirements

- Welsh Local Authorities were consulted in accordance with section 60(1)(a) of the RES Act 2008 in their capacity as regulator.

Responses were received from three local authorities. The responses were supportive of the ban and noted the approach to enforcement will be predominantly intelligence led.

- The Minister for Environment wrote to the Secretary of State in accordance with the Welsh Ministers' duty under section 59(3) of the RES Act 2008 to consult on making an Order under Part 3 of the RES Act 2008.

No response was received from the Secretary of State.

3 April 2018 – EPA 1990 publication requirements

Notices were published by Welsh Government in the Western Mail and London Gazette, in line with the Environmental Protection Act 1990 requirements to inform the public about the proposed 2018 Regulations and invite public representations to the Welsh Ministers.

The notice was also published via a web link on <http://gov.wales/>, by email to those who responded to both the UK and Welsh public consultations and to the Welsh Government's wider network of marine stakeholders. The public were given one month to make their representations to the Welsh Ministers.

No comments were received as a result of the publication of the draft 2018 Regulations.

Summary of consultations and outcomes

Both the UK and Welsh consultations resulted in overwhelming support for the ban.

The Welsh consultation set out the proposed enforcement regime and implementation timescale. The consultation stated our intention for the ban on both the manufacture and the sale of products containing microbeads to come into effect 30 June 2018. The consultation suggested Local Authorities Trading Standards would be the most appropriate regulator to enforce the ban through a variety of civil sanctions and variable monetary penalties. 95% of respondents agreed the enforcement regime was reasonable and proportionate. The levels of variable monetary penalties received overall support from respondents. Some respondents suggested penalties should be higher.

The maximum level of penalties is consistent with those of the Single-use Carrier Bag Charge (Wales) Regulations 2010. We consider it appropriate to apply similar penalties because the microbeads ban will apply to a similar range of businesses of different sizes. The amount of maximum variable penalty is considered to be high enough to deter small to medium size businesses and we consider larger businesses to be deterred by the combination of a monetary penalty and published enforcement notices which might impact on the reputation of their business.

Annex 1 – link to UK Impact Assessment carried out for UK wide consultation

A Regulatory Impact Assessment was carried out on the UK wide proposals. It has since been updated for the equivalent English Regulations and as this is the most up to date version, it is being used for the purposes of the Welsh Government's Regulations. The analysis within the RIA at Annex 1 has been undertaken at a UK level.

The RIA can be viewed via the following link:

<http://www.legislation.gov.uk/uksi/2017/1312/impacts>

Agenda Item 5.1

SL(5)222 – The Animal Health (Miscellaneous Fees) (Wales) Regulations 2018

Background and Purpose

These Regulations set out fees payable to the Welsh Ministers (collected on their behalf by the Animal and Plant Health Agency) in the field of animal health and replace the existing fees that are set out in the Animal Health (Miscellaneous Fees) (Wales) Regulations 2013.

The Regulations provide for fees payable in relation to:

- activities under Regulation (EC) No 2160/2003 on the control of salmonella and other food-borne zoonotic agents (Regulation 4);
- approvals for the purpose of the poultry health scheme established under Council Directive 2009/158/EC on animal health conditions regarding trade in and imports from third countries of poultry and hatching eggs and the Trade in Animals and Related Products (Wales) Regulations 2011 (Regulation 5);
- approvals for the purpose of obtaining bovine semen in accordance with the Bovine Semen (Wales) Regulations 2008 (Regulation 6);
- approvals for the purpose of obtaining porcine semen in accordance with the Artificial Insemination of Pigs (England and Wales) Regulations 1964 and the Artificial Insemination of Pigs (EEC) Regulations 1992 (Regulation 7);
- approvals for the purpose of collection, production and transfer of bovine embryos in accordance with the Bovine Embryo (Collection, Production and Transfer) Regulations 1995 (Regulation 8); and
- inspection of consignments of live animals at border inspection posts in accordance with the Trade in Animals and Related Products (Wales) Regulations 2011 (Regulation 9).

The fee levels provided for in the Regulations represent full cost recovery of fees and some of the fees are increased from existing fees.

Procedure

Negative.



Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

These Regulations are made under section 2(2) of the European Communities Act 1972. Regulations 4 and 5 arise from EU obligations under EU Regulation 2160/2003 and Council Directive 2009/158/EC respectively. The other Regulations referred to in these Regulations (see Background and Purpose section of this report) are also derived from EU obligations. These Regulations will therefore form part of retained EU law after exit day.

The Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks states that “animal health and traceability” is a policy area likely to be subject to clause 15 regulations under the EU (Withdrawal) Bill. Therefore, the law to which these Regulations relate is likely to be an area of EU law that is frozen while common frameworks are put in place.

Government Response

No government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee

7 June 2018



Agenda Item 5.2

SL(5)223 – The Animal By-Products and Pet Passport (Fees) (Wales) Regulations 2018

Background and Purpose

These Regulations set out fees payable to the Welsh Ministers in the field of animal health. The fees are payable by operators of establishments and plants that are required to be approved and inspected under EU Regulation 1069/2009, which lays down health rules regarding animal by-products and derived products not intended for human consumption.

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

These Regulations are made under section 2(2) of the European Communities Act 1972. These Regulations arise from EU obligations under EU Regulation 1069/2009 in respect of health rules regarding animal by-products and derived products not intended for human consumption, and therefore these Regulations will form part of retained EU law after exit day.

The Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks states that “animal health and traceability” is a policy area likely to be subject to clause 15 regulations under the EU (Withdrawal) Bill. Therefore, the law to which these Regulations relate is likely to be an area of EU law that is frozen while common frameworks are put in place.

Government Response

No government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee

4 June 2018



Agenda Item 6.1

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2018 No. 632 (W. 118)

ANIMALS, WALES

ANIMAL HEALTH

**The Pigs (Records, Identification
and Movement) (Wales)
(Amendment) Order 2018**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which applies in relation to Wales, amends the Pigs (Records, Identification and Movement) (Wales) Order 2011 (S.I. 2011/2830) (W. 303).

It removes the definitions of MLCSL (Meat and Livestock Commercial Services Limited) and BPEX (in effect the British Pig Executive) from article 2 and inserts a new definition of AHDB (Agricultural and Horticultural Development Board). All subsequent references to MLCSL and BPEX are replaced by AHDB.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with this Order as the amendments are technical in nature.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2018 No. 632 (W. 118)

ANIMALS, WALES

ANIMAL HEALTH

**The Pigs (Records, Identification
and Movement) (Wales)
(Amendment) Order 2018**

Made 22 May 2018

Coming into force 30 June 2018

The Welsh Ministers, in whom the powers conferred by sections 1 and 8(1) of the Animal Health Act 1981 are now vested⁽¹⁾ make the following Order in exercise of those powers:

Title, application and commencement

1.—(1) The title of this Order is the Pigs (Records, Identification and Movement) (Wales) (Amendment) Order 2018.

(2) This Order applies in relation to Wales.

(3) This Order comes into force on 30 June 2018.

Amendment of the Pigs (Records, Identification and Movement) (Wales) Order 2011

2.—(1) The Pigs (Records, Identification and Movement) (Wales) Order 2011⁽²⁾ is amended as follows.

(2) In article 2 (interpretation)—

(a) omit the definition of “BPEX”;

(b) omit the definition of “MLCSL”; and

(1) 1981 c. 22. The functions of “the Ministers” so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by virtue of S.I. 1999/672. The functions of a Minister of the Crown so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by virtue of S.I. 2004/3044. Section 162 of, and Schedule 11 to, the Government of Wales Act 2006 (c. 32), vest these functions in the Welsh Ministers.

(2) S.I. 2011/2830 (W. 303).

(c) in the appropriate place, insert—

““AHDB” means Agricultural and Horticultural Development Board;”.

(3) In each place where it appears, for “BPEX” substitute “AHDB”.

(4) In each place where it appears, for “MLCSL” substitute “AHDB”.

Lesley Griffiths

Cabinet Secretary for Energy, Planning and Rural Affairs, one of the Welsh Ministers

22 May 2018

Lesley Griffiths AC/AM
Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/L/LG/0273/18

Mike Hedges AM,
Chair of the Climate Change, Environment and Rural Affairs Committee
National Assembly for Wales

Mike.Hedges@assembly.wales

23 May 2018

Dear Mike

Please find enclosed a copy of the Pigs (Records, Identification and Movement) (Wales) (Amendment) Order 2018, for your information. The Order makes changes which will allow pig movements to continue to be reported correctly following the sale of the Meat and Livestock Commercial Services Limited (MLCSL) by AHDB.

The Animal Health Act 1981 requires that orders made under sections 1 and 8(1) are made by Statutory Instrument, but are not subject to any legislative procedure. This means there is no requirement to lay the Statutory Instrument before the National Assembly for Wales.

Regards

Lesley

Lesley Griffiths AC/AM

Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs

Cc: Mick Antoniw AM, Chair of the Constitutional and Legislative Affairs Committee

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

Pack Page 149

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Agenda Item 7.1

Mark Drakeford AM/AC
Ysgrifennydd y Cabinet dros Gyllid
Cabinet Secretary for Finance



Llywodraeth Cymru
Welsh Government

Mick Antoniw
Chair
Constitutional and Legislative Affairs Committee

24 May 2018

Dear Chair,

As you are aware, today I issued a written statement to members regarding the new Ministerial Forum on the future relationship between the UK and the EU.

Building on initial discussions at the Joint Ministerial Committee Europe (JMC - EU Negotiations), the new forum will give the devolved administrations an opportunity to contribute to the development of a UK negotiating position.

Ministers from the Welsh Government will attend alongside those from the Scottish Government and officials from the Northern Ireland civil service and will feed into the JMC (EN). The First Minister has asked Rebecca Evans, Minister for Housing and Regeneration, to act as the lead Minister for the new Ministerial Forum, working with myself as the established Welsh Government representative on JMC (EN).

The first meeting of the forum will take place later today in Edinburgh with the Minister for Housing and Regeneration attending and the Welsh Government will keep members updated on the development of the forum and the progress of its work.

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

We expect the forum to meet on a regular basis. Given the fast-moving nature of the issues with which the forum will be dealing with and the confidential nature of the talks, it may be beneficial for my officials to work with your committee clerk on the best mechanism to keep you and members of the committee updated while maintaining the integrity of the discussions.

A Welsh version of this letter will follow shortly.

Best wishes,

Mark

Mark Drakeford AM/AC
Ysgrifennydd y Cabinet dros Gyllid
Cabinet Secretary for Finance

Mark Drakeford AM/AC
Ysgrifennydd y Cabinet dros Gyllid
Cabinet Secretary for Finance



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

Mick Antoniw AM
Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Dear Mick

4 June 2018

UK governance post-Brexit – intergovernmental relations

Thank you for your letter of 25th May. I would be happy to meet to discuss the development of an inter-governmental relations agreement, as recommended by your committee, and to consider arrangements which may need to be developed as a result of the Intergovernmental Agreement on the European Union (Withdrawal) Bill. My officials will be in touch to arrange a meeting.

Best wishes,

Mark Drakeford AM/AC
Ysgrifennydd y Cabinet dros Gyllid
Cabinet Secretary for Finance

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Mark Drakeford AM
Cabinet Secretary for Finance

25 May 2018

Dear Mark

UK governance post-Brexit – intergovernmental relations

Thank you, again, for your attendance at the meetings of the Constitutional and Legislative Affairs Committee on 23 and 30 April. Both sessions were informative and the discussions assisted us as we prepared our report on the *Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No.2) on the European Union (Withdrawal) Bill*.

You will recall that future inter-governmental relations and the Committee's report on *UK governance post-Brexit* were discussed during both meetings. Recommendation 9 of that report stated:

We recommend that the Welsh Government enters into an inter-governmental relations agreement with this Committee to support the scrutiny of Welsh Government activity in this area.

During the Plenary debate on the report on 28 February, the Counsel General said the Welsh Government is happy to discuss with us the content of an agreement on inter-governmental relations. He added that, in doing so, the Welsh Government would want to consider the agreement between the Scottish Parliament and Scottish Government.

At our meeting on 30 April, you also reiterated the Welsh Government's willingness to work with this committee in developing the arrangements that will be needed on the part of the legislature to oversee the actions that will flow from the Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks.



As a first step in the process, I think it would be helpful to meet and discuss how we takes this work forward and I would be grateful if you could let me know when might be convenient.

I am copying this letter to the Llywydd, the First Minister, the Counsel General, the Chair of the External Affairs and Additional Legislation Committee and the Chair of Climate Change, Environment and Rural Affairs Committee.

Yours sincerely,

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.





Llywodraeth Cymru
Welsh Government

Our ref: MA/L/JJ/029918

Mick Antoniwi, AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA
seneddCLA@assembly.wales

24 May 2018

Dear Mick

Thank you for your letter of 8 May 2018 enquiring about the Welsh Government's approach to laying subordinate legislation that is not in the form of a statutory instrument, and the provision of Explanatory Memoranda.

As with statutory instruments, our approach towards whether to lay an item of subordinate legislation not in the form of a statutory instrument is guided by the procedure set out in its parent Act or Measure. If the item of subordinate legislation is required to be laid, we follow the requirements of the National Assembly for Wales' Standing Orders, in accordance with its definition of subordinate legislation.

In particular, we consider whether Standing Order 27.14 is relevant. This applies the provisions of Standing Order 27 to a report, guidance, code of practice or other document required to be laid before the Assembly **and** which is also subject to any form of Assembly procedure that is equivalent to an affirmative or negative type procedure. Where the provisions of Standing Order 27 do apply to such items, these include the requirement in Standing Order 27.1 to lay an explanatory memorandum alongside the subordinate legislation (in the same way as an explanatory memorandum is provided for a statutory instrument subject to an affirmative or negative type procedure).

Where subordinate legislation not in the form of a statutory instrument has an Assembly procedure attached it is laid under Standing Order 27. If it does not, it is laid under Standing Order 15.1(i). We have a long standing arrangement with your committee whereby we notify you as a courtesy when statutory instruments are laid under Standing Order 27. We also notify you as a courtesy when certain statutory instruments which do not have to be laid are made, in particular commencement orders, and when certain items of subordinate legislation not in the form of a statutory instrument are laid, particularly if that item is laid under Standing Order 27.

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

In your letter you mentioned four items in particular, all of which relate to the water industry. Both the *Strategic Priorities and Objectives Statement to Ofwat issued under section 2B of the Water Industry Act 1991* and *Charging Guidance to Ofwat Relating to Developer Charges, Bulk Supply Charges and Access Charges* had a negative type procedure attached. In these instances Standing Order 27.14 applied and they should have been accompanied by an explanatory memorandum when laid. We should also have brought these to your attention as a courtesy. In terms of the two directions, as they did not have an Assembly procedure attached Standing Order 27.14 did not apply and so an explanatory memorandum was not required.

As your letter notes, determining whether an item meets the definition of subordinate legislation set out in Standing Orders is not always easy to determine. In the cases of the two items you identified where Standing Order 27.14 should have applied, these were incorrectly determined to not meet the definition of subordinate legislation. This was due to an administrative oversight on our part for which I apologise. I am of course happy to look again at our internal procedures to avoid such oversights in future.

I hope this information helps to clarify matters.

I am copying this letter to the Chair of the Climate Change, Environment and Rural Affairs Committee and to the Counsel General..

Yours sincerely



Julie James AC/AM
Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip

Agenda Item 10

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

By virtue of paragraph(s) vi of Standing Order 17.42

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