

Explanatory Memorandum to The Private Water Supplies (Wales) Regulations 2017.

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources 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/Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Private Water Supplies (Wales) Regulations 2017. I am satisfied that the benefits justify the likely costs.

Lesley Griffiths AM,
Cabinet Secretary for Environment and Rural Affairs
30 October 2017

1. Description

The Private Water Supply (Wales) Regulations 2017 will revoke and replace the Private Water Supply (Wales) Regulations 2010 transposing additional requirements of Council Directive 98/83/EC on the quality of water intended for human consumption in relation to private water supplies, as amended by Commission Directive 2015/1787 of 6 October 2015.

On 6 October 2015, Commission Directive 2015/1787 (“the 2015 Directive”) amended Annexes II and III of the Drinking Water Directive. The amendments made by the 2015 Directive need to be transposed in to National law by 27 October 2017.

The Regulations introduce new requirements for local authorities which will give them in the future an opportunity to monitor drinking water parameters at more appropriate frequencies. The regulations provides an option to perform the drinking water monitoring in a more flexible way, provided a risk assessment is performed ensuring full protection of public health. It follows the principle of ‘hazard analysis and critical control point’ (HACCP) used already in food legislation, and the water safety plan approach laid down in the WHO Guidelines for Drinking Water Quality. These amendments will allow a better and more problem-oriented monitoring of small water supplies. The new monitoring and control system allows to reduce unnecessary analyses and to concentrate on those controls that matter.

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

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 the Government of Wales Act 2006 (“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.

These Regulations are made to ensure correct transposition of the 2015 Directive and so there is little discretion involved. The Regulations also do not amend any provision of an Assembly Act or Measure. The Welsh Ministers have therefore determined that the negative resolution procedure is appropriate for making these Regulations.

The transposition deadline for the 2015 Directive is 27 October 2017.

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, 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 section 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.

4. Purpose & intended effect of the legislation

This instrument applies to Wales.

The objective of the Regulations is to include updated EU requirements for the risk assessment, sampling, monitoring and analysis of private water supplies in Wales.

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

Officials will consolidate the 2010 Regulations into new regulations, rather than amending regulations being issued.

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

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

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

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

The regulations update requirements for local authorities to monitor and carry out risk assessments.

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

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

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

parameters.

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

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

The relevant requirements in the regulations are set out below:

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

Regulation 14 sets out the sampling and analysis requirements for a local authority. The amendments to the directive now require copper, lead and nickel samples to be taken as an unflushed sample.

Schedule 2: The tables detailing the monitoring requirements for local authorities have been updated to meet the new requirements of Annex II of The Drinking Water Directive.

The schedule also details the requirements for varying a sampling frequency or parameter on a private supply.

5. Consultation

A consultation was published on 11 April 2017. The consultation was open for 12 weeks and closed on 12 July 2017. Details of the consultation undertaken are included in the RIA below.

PART 2 – REGULATORY IMPACT ASSESSMENT

A private water supply is one which is not provided by a water company. About 1% of the population in England and Wales do not have a public supply of mains water to their home and instead rely on a private water supply. Mostly, but not exclusively, these occur in the more remote, rural parts of the country.

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

The Private Water Supply Regulations (Wales) 2017 are intended to safeguard users of a private water supply who may not benefit from the same stringent standards applied to drinking water available from a mains supplied source. The Regulations do not apply to single domestic dwellings, unless the owner/occupier requests a risk assessment.

Owners/users of private water supplies have responsibility under the private water supplies regulations to supply water that is wholesome and safe to drink.

Where a supply is identified as not being safe or wholesome then following an investigation, remedial actions may be necessary to meet the drinking water quality standards.

Businesses in Wales using a private water supply have an economic advantage over businesses using a mains supply, as they are not paying a metered water bill. The Welsh Government does not expect this advantage to come at the expense of the health and safety of the consumers of a private water supply.

Options

Option 1: Do nothing – make no amendments to the Private Water Supplies (Wales) Regulations 2010.

Option 2: transpose new requirements without amending the fees schedule or minor changes to clarify certain aspects of the regulations.

The Regulations would be amended to meet the new requirements in Council Directive 98/83/EC on the quality of water intended for human consumption in relation to private water supplies, as amended by Commission Directive 2015/1787 of 6 October 2015, by amending the Regulations to include the updated requirements of Annexes II and III.

The Fees schedule would be left as it is in the 2010 Regulations with no amendments.

Clarifications would not be made to the Regulations.

Option 3: Preferred option –as consulted on - transpose new requirements, amend fees in lines with updated fees table proposal and update regulations to ensure clarity.

The Regulations would be amended to meet the new requirements in Council Directive 98/83/EC on the quality of water intended for human consumption in relation to private water supplies, as amended by Commission Directive

2015/1787 of 6 October 2015, by amending the Regulations to include the updated requirements of Annexes II and III.

The regulations would amend the fees schedule in line with the proposed fees table (see Annex 1) from the Drinking Water Inspectorate's research into fees.

The regulations would be amended to clarify certain aspects of the Regulations that have caused confusion in their interpretation in the past.

Option 4: transpose new requirements, amend fees schedule to remove the fees table and update the regulations to ensure clarity.

The Regulations would be amended to meet the new requirements in Council Directive 98/83/EC on the quality of water intended for human consumption in relation to private water supplies, as amended by Commission Directive 2015/1787 of 6 October 2015, by amending the Regulations to include the updated requirements of Annexes II and III.

The regulations would amend the fees schedule to remove the fees table, which sets maximum amounts for the local authorities to charge and instead insert a requirement for local authorities to cover their costs.

The regulations would be amended to clarify certain aspects of the Regulations that have caused confusion in their interpretation in the past in relation.

Respondents to the consultation expressed concerns about removing the fees table because it meant the risk assessments could potentially be used as an income generating mechanism for Local Authorities and it also reduced a supply owner's ability to plan for future fee payments. For these reasons, this option has been discounted and is not included in the assessment of costs and benefits.

Costs & benefits

Option 1 (do nothing)

Costs

Wales could face infraction from the EU if the new requirements of the Drinking Water Directive are not adhered to. Infraction would carry significant costs to the Member State. In this case, the UK Government would be fined and it is assumed that the costs would be passed on to the Welsh Government.

An applicable example of infraction occurred in 2012, involving Ireland's failure to regulate the installation and use of septic tanks. The European Court of Justice found that Ireland had failed to fulfil obligations on wastewater which is disposed of in septic tanks, threatening drinking water and putting human health at risk.

Ireland was fined a lump sum of €2m plus daily a charge of €12,000 until compliance was met. Ireland was also fined a further €1.5 million for failing to

comply with other regulations regarding Environmental Impact Assessments (EIAs).

However, the EU executive wanted to fine higher amounts, seeking a lump sum of €5.5m and plus a daily penalty of over €26,000 for the septic tanks infringement. They also pressed for around €4.4 million over the EIA issue. The court had issued lower penalties because ability to pay was diminished due to the economic difficulties Ireland was facing at the time. Given that the relatively healthier economic conditions that currently prevail, fines might not be softened if infraction occurred now.

Although the infraction example for Ireland is not identical to the infraction Wales could face, the fines incurred by Ireland provide a proxy for the possible costs to Wales. In paying the fines, recipients of public services would be adversely affected as the fines would have to be paid from the public purse.

Benefits

There are no benefits identified with option 1.

Option 2: transpose new requirements without amending the fees schedule or clarifying the regulations.

Local Authorities have expressed concerns during the review of these regulations and during the consultation period that the current fees do not allow them to recoup the costs of complying with these Regulations. In practice this means that local authorities are not able to sufficiently resource themselves to carry out their duties in full.

The Drinking Water Inspectorate's annual report for 2016 noted that at present the statutory requirements of the Regulations are not being fully met by the local authorities with 32% of regulation 9 supplies not being sampled by LA's in 2016.

In 2016 the local authorities reported 2,744 private water supplies in Wales (excluding single domestic dwellings). Of these 1,448 supplies fell into the Regulation 9¹ category, and approximately 70% of the 1,448 supplies are used by the tourism and leisure sector and 20% serve food premises. (11.5% of private water supplies sampled in Wales during 2016 were of unsafe microbiological quality containing E.coli).

The lack of compliance creates a risk that members of the public will be exposed to water supplies that are a potential danger to human health on a more frequent basis.

Costs

The changes reflecting the latest amendments to Drinking Water Directive are not expected to incur any additional costs to supply owners, as the

¹ Large supplies and supplies used in a public building or a commercial activity

amendments allow for a more risk based approach to sampling and monitoring (which should reduce costs in the long term).

Research carried out by the Drinking Water Inspectorate indicated that a number of local authorities felt that the fees schedule as it stands does not provide a sufficient funding resource to carry out certain functions required by the Regulations. (An example being risk assessments which currently have a maximum level of £500 for risk assessments both Reg 9 and Reg 10² supplies).

The research highlighted that these two regulations had differing levels of complexity and that a case could be made to reduce the maximum fee for Reg 10 supplies and increasing the maximum fees for Reg 9 supplies {which tend to be more complex to risk assess due to their commercial nature}).

The fee schedule is not amended under this option and so is no additional cost to supply owners or any change in the fees received by Local Authorities. The following section sets out the existing fees and

Risk Assessment Fees

Risk assessments are required by the regulations at least once every 5 years (or if the supply owner identifies a change which will impact on the supply)

Cost of RA	Change/ difference for supply owner
£500	0

- The DWI's research seemed to indicate that in general Regulation 9 supplies are large and more complex to risk assess than a Regulation 10 supply.
- At present there may be an element of cross subsidy with Regulation 10 supplies (shared domestic supplies) subsidising Reg 9 supplies.

Investigation Fees

Investigations are carried out where a risk assessment or sample has identified a risk to human health in the supply. The cost indicated below is the current maximum cost that a local authority can charge for an investigation.

Cost of investigation	change	Estimated numbers affected
£100	0	24,130

- Investigations are only required where the local authority suspects or has evidence of an unwholesome supply (this can occur from LA's noting concerns from a risk assessment or from a failed water quality sample).

² Small, shared domestic supplies

- Estimated numbers affected is taken from the Drinking Water Inspectorate data for investigations in Wales, who recorded 24,130 investigations in Wales.
- Local authorities have already expressed concerns on numerous occasions, that the current cost does not cover the actual cost of all investigations. As the current fee would cover less than a day of an officer's time, while a more complex investigation is normally expected to take approximately 2-3 days of an officer's time. So at present a number of investigations are carried out at a significant loss to the local authority.
- Local authorities are concerned that this is leading to the risk of insufficient investigations being carried out on suspected supplies, which may mean that if there is more than one issue contributing to a sample failure it may not always be identified as the local authority officer does not have sufficient time to investigate the supply in any detail. This in effect could lead to supply owners paying twice when a sample fails again at a later date due to additional unidentified risk factors which were not being picked up in the initial investigation, meaning that further investigations are carried out until supply samples become compliant.
- An insufficient investigation may also fail to identify continuing hazards to the water supply, continuing to put anyone using the supply at risk.

Monitoring and Analysis

Monitoring and analysis are carried out in line with the requirements in the schedules of the Regulations. For supplies of less than 10 m³/day this is carried out once a year. This then increases proportionally based on the volume of water used.

Cost of analysis	change	Estimated numbers affected
Check £100	0	2,744
Audit £500	0	2,744

Check

- The fees for analysis which tends to be carried out by commercial laboratories have remained the same since the Regulations were implemented in 2010.
- There has been no adjustment for inflation, so a number of local authorities are sending samples for analysis at a loss.

Audit

- Local authorities have expressed concerns that this is not sufficient to cover costs at present so they are running at a loss.
- Additional parameters were added to the Regulations in 2016 to meet the requirements of the Euratom Directive, however no adjustment was made to the fees at the time.

Local authorities will not have sufficient resource to carry out their duties in full, leading to risk of an increase in supplies that are a risk to public health.

Benefits

Private water supply owners who tend to be located in more rural areas will not see an increase in costs of owning and maintaining a private water supply.

As with Option 3, this option will bring the Regulations in Wales into line with the latest EC Directive, removing the risk of infraction fines being imposed on the UK/Wales.

Compliance with the amendments to the current regulations would require private water supplies to be risk assessed, monitored, sampled and analysed as before, but will allow for local authorities to remove certain parameters from their assessments in the long run if they can provide sufficient evidence to the regulator confirming that a parameter is not a risk to a particular supply. This will potentially allow local authorities to reduce the burden of risk assessments, sampling and monitoring once sufficient evidence is gathered to rule out certain parameters being a risk to private water supplies.

Option 3 (preferred option)

According to the Drinking Water Inspectorate's (DWI) 2016 report on Private Water supplies there are an estimated 14,981 private water supplies in Wales, of which 1,448 are large supplies used for supplying public buildings or for commercial purposes, 1,284 used as small shared supplies, 12 private distribution systems and 12,205 are to single private dwellings.

No monitoring of private supplies is required for single domestic dwellings not used for commercial purposes, unless the authority is requested to do so by the owner or occupier or the authority considers it is necessary to fulfil its general duty under section 77 of the Water Industry Act 1991.

Compliance with the amendments to the current regulations would require private water supplies to be risk assessed, monitored, sampled and analysed as before, but will allow for local authorities to remove certain parameters from their assessments in the long run if they can provide sufficient evidence to the regulator confirming that a parameter is not a risk to a particular supply. This will potentially allow local authorities to reduce the burden of risk assessments, sampling and monitoring once sufficient evidence is gathered to rule out certain parameters being a risk to private water supplies.

Additional amendments have been made to this version of the Regulations to clarify points where local authorities have interpreted the regulations differently and requested further guidance. This should make little material difference to how the local authorities carry out their duties as where the regulations were previously unclear, authorities would request further guidance and advice from the Drinking Water Inspectorate (the Drinking Water Regulator).

The fees table would also be amended to reflect the changes in costs to the local authorities since the regulations were initially brought into force in 2010.

Costs

The costs of the assessment would be recouped by the local authorities from the business (private water supply owner) involved.

The affected supplies would primarily be located in rural areas as they are more likely to be serviced by private water suppliers.

The changes reflecting the latest amendments to Drinking Water Directive are not expected to incur any additional costs to supply owners, as the amendments allow for a more risk based approach to sampling and monitoring (which should reduce costs in the long term).

Sampling and analysis fees

At present local authorities are already required to carry out risk assessments on relevant private water supplies to establish whether there is a significant risk of supplying water that would constitute a potential danger to human health. The new regulations do not change the required frequencies of these risk assessments.

The Private Water Supplies (Wales) Regulations 2010 set the current maximum fees chargeable by the local authorities (see Annex 1 for the original fees table and the proposed fees table) for a risk assessment for private water supplies at £500 with sampling costs of £100 per visit (analysis of samples can be anything from £25 to £500) and investigations contingent on a failed sample costing £100.

Remedial works to premises

If failures or risks are identified with the supply then the cost of remedial work that is necessary to the remove the threat would fall on affected supply owner.

This in turn could produce further costs if the supply is essential to a business, which would have to shut down temporarily whilst remediation takes place.

Risk Assessment Fees

Risk assessments are required by the regulations at least once every 5 years (or if the supply owner identifies a change which will impact on the supply)

Cost of RA	change	Numbers affected by change	Est cost per year to each supply	Change in total risk assessment fees per annum

Reg 10 ³ = £300	Decrease of £200	1,284	£40 saving	-£51,360
Reg 9 ⁴ = £700	Increase of £200	1,448	£40 increase	£57,920

- An addition of £40 year per supply for Regulation 9 (commercial) supplies. .
- Shared supplies, which tend to be domestic set ups would make a saving of £40 per year per supply.
- Shared supplies which tend to be made up of domestic dwellings will no longer be cross subsidising commercial supplies.

Investigations

Investigations are carried out where a risk assessment or sample has identified a risk to human health in the supply. Last year in Wales there were 24,130 investigations carried out⁵.

Cost of investigation	change	Estimated numbers affected	Est additional cost to supply owners per year ⁶
£250	£150	24,130	£3,619,500

- The increase of fee is a maximum amount that the supply owner can be charged, however the regulations do make it clear that local authorities should only be covering the cost to themselves of each investigation, so we would expect a number of these investigations not to require the maximum fee of £250.
- The maximum increase of £150 per supply will only apply to supplies which local authorities believe or have evidence of being unwholesome (and which require more time during the investigation).
- The additional amount will allow local authorities to recover costs of carrying out an investigation based on an assumption that an investigation can take two working days to complete.
- Although there is a proposed increase on the supply owner, this cost is generally avoidable, by a supply owner complying with local authority advice in relation to management and treatment of a private water supply. The increased cost may help to incentivise better supply management, which will have public health benefits to those using the supply.

³ Regulation 10 applies to all supplies other than those where water from a public supply is further distributed and where water is used for a commercial activity or to the public, or where it supplies >10m³ per day (Regulation 9).

⁴ Regulation 9 Regulation 9 applies to all private supplies where the water:

(a) Supplies an average daily volume of water of 10m³ or more for domestic purposes. (Note. where volume cannot be ascertained this equates approximately with 50 persons or more); or

(b) Supplies water to premises where the water is used for a commercial activity or to public premises.

⁵ Local authorities must provide the DWI with data on investigations carried out, each year.

⁶ Based on the assumption that every supply requires the full £250 investigation cost and not taking into account the cost saving of a number of supplies not requiring repeat investigations.

- The increase in fee allows a local authority to investigate the failure thoroughly and provide informative advice to avoid further failures on the supply in question in the future.
- The increase in fee should mean that a supply owner will not be subject to as many separate investigations from a local authority, as the authority will have more time to establish the causes of issues in a water supply.
- The estimated additional cost on all supply owners of £3,619,50 does not take into account the sliding scale of investigation fees (with some supplies only needing minimal investigations so continuing to have investigation charges that are under £250).
- The estimated additional cost has also not taken into consideration the potential saving to supply owners from repeat investigation charges if the local authority is able to identify the causes of quality issues with the supply during an earlier more detailed investigation.

Monitoring and Analysis

Monitoring and analysis are carried out in line with the requirements in the schedules of the Regulations. For supplies of less than 10 m³/day, this is carried out once a year. This then increases proportionally based on the volume of water used.

Cost of analysis	change	Estimated numbers affected	Estimated additional cost to supply owners per year
Check £110	£10	2,744 ⁷	£27,440
Audit £600	£100	2,744	£274,400

Check

- An increase to £10 would account for laboratory analytical costs increase by 8% since 2010 (calculation used by the DWI economist and research)

Audit

- Increasing the maximum cost would cover the vast majority of circumstances. The additional cost would also include sampling accreditation (over 3 years), inflation, radioactive substances (where risk is identified).
- Although there is an increase in both sets of fees it is also worth noting that the Regulations have changed to allow samples and analysis to be dropped for certain parameters if the authorities have sufficient data from previous samples to discount the parameters risks. Over the long run this should allow for a number of supplies to benefit from reduced fees on check and audit monitoring.

⁷ Based on the number of recorded reg 9 and 10 supplies in the DWI's drinking water quality report for Wales 2016.

The changes to the fees will, in most cases, increase the costs incurred by supply owners for the risk assessment and monitoring work. In total, the additional cost to supply owners is estimated to be £3,927,900 per annum, with the majority of this cost associated with investigative work where a risk to human health has been identified. There will be a corresponding increase in the fees received by Local Authorities, with the fees better reflecting the cost of the work undertaken. The net impact of the amendments to the fees table is therefore zero.

Benefits

Making the Regulations will ensure compliance with the latest EC Directives and remove the risk of infraction fines being imposed on the UK/Wales.

The amendments will also allow for local authorities to reduce the sampling and monitoring of certain parameters once there is sufficient evidence to discount a risk of certain parameters from a particular water supply. This will mean that in the long run supply owners should benefit from reduced monitoring and sampling requirements on certain parameters, as the Regulations will move to a more risk based approach.

Public health benefits

According to the Drinking water Inspectorate's 2016 drinking water report 5.2% of tests on private water supplies failed to meet water quality standards specified by the Drinking Water Directive. Of these failures 11.5% of samples contained E.coli and 11.3% contained Enterococci in Wales, which are failures related to faecal contamination. Almost 3 quarters of the supplies failing were recorded as large supplies or supplies to commercial or public premises, where those accessing the water for use have no power to safeguard themselves against the risks from the supply.

Increasing the fees will allow for the local authorities to continue to resource the risk assessing, monitoring, sampling and analysis of these supplies, which ensures that supplies that are a risk to human health are identified and investigated with remediation measures put in place.

Without sufficient fees in place it is likely that local authorities will try to prioritise their supplies based on the resource available, which would mean more supplies that are a risk to public health not being identified or remediated.

Summary of the preferred option

Transposing the amendments to the Drinking Water Directive by amending Private Water Supplies (Wales) Regulations 2010 and increasing the fees (option 3) is the preferred option due to a range of factors.

Infraction could occur from non-compliance, which would impose significant costs in terms of fines to the member state. These costs would be avoided through transposing the Directive.

There would be slightly increased costs incurred by Welsh businesses for risk assessments, monitoring, sampling and analysis of their private water supplies. However in the long run there is the opportunity for sampling, monitoring and analysis costs to reduce, once a local authority has sufficient evidence to discount certain parameters as a risk to a supply.

There are potential public health benefits associated with option 3. Private water supplies continue to be a higher risk to public health than mains supplied water. With a number of water borne illnesses potentially occurring from a poorly managed supply.

Therefore option 3 is the preferred option as it would continue to allow local authorities to deliver public health benefits with sufficient resource to carry out their duties, whilst incurring lower costs relative to the 'do nothing' option.

Consultation

Officials attend the Water Health Partnerships Private Water Supply Task and Finish Group (which is comprised of local authority environmental health officers, who apply the regulations, Welsh Government, Public Health Wales and the Drinking Water Inspectorate). Between October 2015 and April 2017 officials have discussed the proposed changes to the Regulations at the task and finish group as a rolling agenda item, as any changes to the Regulations would directly impact members of the task and finish group.

Officials publically consulted on the draft Regulations and amendments to the fees for 12 weeks between 11 April 2017 and 12 July 2017. 24 Responses were received from a combination of individuals, local authorities, health bodies and arms length government organisations.

A summary of the out come of the consultation can be found at annex 2 (Welsh Government Summary of Responses)

The consultation specifically highlighted 3 fees options:

Option 1: no change

Option 2: amended fees table

Option 3: uncapped fees

Option 2 received the most support with local authorities noting the requirement for more funding to cover costs. This is covered in more detail in the summary of responses at annex 1. This reflects the preferred option for the new regulations.

Annex 1: Fees Table

Original fees table:

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

Proposed amended table:

Service		Maximum fee (£)
Risk assessment (each assessment):		
	regulation 9 supply	700
	regulation 10 and 11 supplies	300
Sampling (each visit) ^a :		100
Investigation (each investigation):		250
Granting an authorisation (each authorisation):		100
Analysing a sample—		
	taken under regulation 10 or 11 ⁸ :	25
	taken during monitoring for Group A parameters:	110
	taken during monitoring for Group B parameters:	600

⁸ Regulation 10 has been split a bit further into a regulation 11, to allow for clarification on tenanted properties, which have previously been unclear in previous versions of the regulations.

Annex 2: summary of responses:

Introduction

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

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

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

Part 1: Transposition of the Drinking Water Directive

Part 2: additional amendments

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

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

Responses

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

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

Part 1: Transposition of the Drinking Water Directive

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

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

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

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

There were 13 responses to this question.

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

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

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

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

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

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

Part 2: additional amendments

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

There were 13 responses to this question.

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

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

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

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

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

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

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

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

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

There were 14 responses to this question.

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

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

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

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

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

There were 16 responses to this question.

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

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

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

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

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

The Welsh Government notes this comment but also notes that in the DWI's annual reports, the water quality failure rate of private water supplies is consistently considerably higher than for mains provided supplies, with 5.2% of private water supplies failing to meet national standards. In 2016 187 private water supplies in Wales were recorded as a potential danger to human health, with local authorities serving Regulationn18 notices on the supplies, of these failures 70% of them were large supplies or supplies to commercial or public premises. This seems to indicate that a number of private water supplies are not following good practice in relation to design, construction and management.

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

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

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

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

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

There were 17 responses to this question.

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

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

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

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

There were 16 responses to this question.

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

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

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

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

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

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

There were 15 responses to this question.

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

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

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

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

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

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

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

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

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

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

There were 18 responses to this question.

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

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

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

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

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

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

Reasons given for the positive responses include:

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

Reasons given for the negative responses include:

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

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

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

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

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

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

Supportive respondents saw possible advantages including:

- A streamlining of data and formats between the local authorities
- Access to cross boundary risk assessments
- Identification of at risk groups from pollution or sufficiency issues and implications of abstraction
- Ability to identify unknown commercial premises on a private water supply
- A wales wide data base would breakdown the LA based boundaries which do not apply to changes in environmental factors) i.e. land use, geology...) – helping to improve the understanding between water quality, water security and water health.

- Assist in future land use policy and planning
- Potential to reduce the burden of responding to FOI and EIW requests and allowing wider access to information for relevant stakeholders

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There were 15 additional comments in relation to the Regulations.

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

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

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

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

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

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

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

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

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

- i) Positive effects or increased positive effects on opportunities for people to use the Welsh language and on

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

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

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

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

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

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

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

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

There were 4 responses to this question.

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

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

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

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

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

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

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

Next steps

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

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

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

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

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

Additional considerations for Welsh Government as a result of the Consultation

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

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

Full list of respondents

Public sector bodies and group responses

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

Local Authority Responses

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

Private Individual responses

- 7 respondents all who specified a desire to remain anonymous

Agricultural union responses

- Farmers Union Wales

Private Representative Organisation responses

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

Public health group (not public sector) responses

- Water Health Partnership

Charity responses

- Llanthony Valley and District Show Society