



**PROPOSED WATER SUPPLY (WATER QUALITY)
(AMENDMENT) REGULATIONS (NORTHERN
IRELAND) 2009**

CONSULTATION REPORT

July 2009

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1. Introduction

- 1.1 The Department for Regional Development (the Department) has recently completed a public consultation exercise on the proposed Water Supply (Water Quality) (Amendment) Regulations (Northern Ireland) 2009 (the proposed Regulations). Fifteen responses have been received and analysed. The Department's views, along with any changes made to proposed Regulations, are outlined in the following report.
- 1.2 The Water Supply (Water Quality) Regulations (NI) 2007, which the proposed Regulations will amend, implement the requirements of the Drinking Water Directive (DWD)¹, the water treatment requirements of the Surface Water Abstraction Directive² (SWAD), and lay down other national requirements in respect of standards, treatment, monitoring, and reporting requirements for drinking water.
- 1.3 The main reasons for the proposed amendments are to:
- make monitoring of water quality a legal requirement following the repeal of SWAD in December 2007;
 - introduce the water safety plan approach recommended by the (United Nations) World Health Organisation (WHO) by widening the scope of risk assessments carried out on drinking water;
 - help the identification of trends in water quality in a timely manner, potentially enabling solutions other than treatment to be identified and introduced;
 - add to the Northern Ireland Environment Agency's (NIEA) water monitoring programme for the Water Framework Directive³ (WFD);

¹ European Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption,

² European Directive 75/440/EC on the quality required of surface water intended for the abstraction of drinking water,

³ European Directive 2000/60/EC establishing a framework for Community action in the field of water policy

- introduce additional enforcement powers to allow the Department to take action against Northern Ireland Water (NIW) if untreated water enters the public supply; and
- create an offence for the introduction of unauthorised substances and processes by the water undertaker in treating water for the public supply.

1.4 The 12 week consultation period ended on 13 February 2009. The purpose of this report is to summarise the main responses we received and outline how the final regulations have been amended to take into account the points raised.

1.5 Information letters and the consultation document were issued to over 300 organisations, groups and individuals. A press release and advertisements in local newspapers publicising the consultation were issued in November 2008. The consultation document was also placed on the Department's website http://www.drdni.gov.uk/index/water_policy.htm.

2. Responses to the Consultation

2.1 14 organisations responded to the public consultation; a list is provided at Annex 1. Of these respondents, two made no specific comment on the policy proposals but used the opportunity to inform the Department of the work that these organisations undertake.

2.2 The consultation asked seven specific questions. A summary of the answers to these questions and the Department's reply is set out at Annex 2. A More detailed analysis is provided below.

Consultation Question 1

Do you agree that the scope of regulation 4 should be widened to include water temporarily supplied by NIW in bottles or containers during the interruption of a piped supply?

2.3 All respondents who made comments were supportive of this proposal. Two respondents also stated it would be preferable if these supplies were obtained from a source whose safety was pre-determined from an 'off supply' contingency plan.

Response

2.4 Temporary supplies of water provided by NIW, for example in bottles, currently meet the requirements of the water quality regulations. The proposed Regulations will require NIW to do so by law. The source of temporary supplies is always separate from the original (interrupted) source and must meet the water quality requirements.

Consultation Question 2

Do you agree that NIW should be prohibited from supplying water from a new source without prior approval from the Drinking Water Inspectorate (DWI)?

2.5 All respondents who made comments were supportive of this proposal. Two respondents suggested identifying possible abstraction sources for use in contingency situations, such as a drought, and the risks associated with using them. One respondent agreed with the proposal, but stated that consumers should be given adequate notification and appropriate information if water is supplied with little or no treatment, such as in a civil emergency case.

Response

2.6 NIW already identifies alternative abstraction sources for contingency purposes. All water taken from these sources for use as drinking water must be treated to the same standards as the usual sources, as set out in law. In an emergency, where water is supplied by NIW with little or no treatment, customers would be advised of the appropriate action to be taken, for example, to boil all water before drinking it.

Consultation Question 3

Do you agree with the proposed requirement for NIW to supplement the Northern Ireland Environment Agency's monitoring programme in relation to Articles 7 and 8 of the Water Framework Directive?

2.7 All respondents who made comments were supportive of this proposal.

Response

2.8 This amendment will require NIW to monitor certain water quality parameters at specific frequencies so that the information which is collected can also be used for the purposes of Articles 7 and 8 of the WFD. This will prevent unnecessary duplication and costs.

Consultation Question 4

Do you agree that the current risk assessment procedures for water treatment works should be widened in scope in line with World Health Organisation Guidelines?

2.9 All respondents who made comments were supportive of this proposal.

Response

2.10 The proposed Regulations will broaden the risk assessments which must be carried out by NIW on drinking water to follow WHO Guidelines.

Consultation Question 5

Do you agree that powers should be available to the Department to take enforcement action against NIW if the company fails to comply with the water treatment and risk assessment requirements of new regulations 26 to 28?

2.11 All respondents who made comments were supportive of this proposal. One respondent requested further information as to why the enforcement would take the line of civil enforcement powers instead of the criminal offence as in England and Wales.

Response

2.12 In England and Wales there are over twenty privately owned companies delivering water and sewerage services. These have been in operation for 20 years. Differences in scale and operational experience may justify the use of criminal sanctions there. Here, the one to one relationship between NIW, the Department and NIAUR, the government's ownership of NIW, and the relatively new arrangements for governance do not justify automatic replication of English and Welsh arrangements (unless there are clear EU requirements). The enforcement powers available to the Department enable it to require NIW to carry out remedial action (whereas a criminal penalty does not). Taking appropriate action to ensure the safety of drinking water is the most important issue. An offence of supplying water which is unfit for human consumption already exists and so prosecution is already available. We will keep the need for criminal sanctions for the purpose of complying with EU requirements under review.

Consultation Question 6

Do you agree that the requirement on NIW to make water supply records available for inspection by the public at all reasonable hours should be replaced by one of providing information on request within seven days and free of charge?

2.13 One respondent was not supportive of this proposal and asked that members of the public still be allowed to request this information in person. They also sought clarification on the number of days NIW would be given to respond to such a request and wanted to know if there would be a monitoring arrangement to ensure requests were dealt with in time. NIW agreed that

information requests should be offered free of charge. However, due to the possibility of emergency events and holidays, they suggested a 20 day window over the seven day.

Response

2.14 Members of the public will still be able to request water supply records in person under these proposals, as recommended. NIW's standard service agreement currently aims to provide responses to most requests of information within ten working days. We believe that this represents a reasonable time within which to answer most requests. Monitoring arrangements would more appropriately be dealt with through NIW's customer services and through normal regulatory reporting. Setting out a detailed monitoring regime in the proposed Regulations would be inflexible and could involve disproportionate costs.

Consultation Question 7

Do you agree that some form of reporting by NIW, to district council, should continue in addition to the annual report given by DWI? If so, do you have any views on what form the report should take?

2.15 All respondents except NIW were supportive of the company continuing to provide reports to district councils. Some respondents also listed the information that they wanted included in these reports. Two respondents requested that the NIW report continue in addition to the DWI report. One respondent questioned the cost effectiveness of having both NIW and DWI reports as they report on the same quality standards. NIW did not feel that it was necessary to provide district councils with the report as the information is already contained in the DWI annual report.

Response

2.16 Currently, the annual drinking water quality reports issued by DWI and NIW are very similar, containing much of the same information. To prevent duplication, therefore, the contents of the NIW annual report will be amended to reflect the requests raised by the respondents. In particular, Councils asked that information be provided for their local area, rather than for Northern Ireland as a whole. These changes will be reflected in the NIW report for 2009, which will be issued by 30 June 2010, at which time the DWI report will focus on other aspects of drinking water quality.

3. EU Crime Directive

3.1 The European Commission recently issued a new Directive, called the Environmental Crime Directive (Directive 2008/99/EC). This Directive requires countries to protect the environment by making certain actions criminal offences. Insofar as this Directive applies to water, many of these actions are already offences by virtue of existing primary legislation. However, a gap has been identified in one area and the proposed Regulations will be used to address this. The Directive requires transposition by the end of 2010. If further measures are required in light of fuller analysis, appropriate amendments will be brought forward.

3.2 The proposed Regulation will make it a criminal offence for a water undertaker (that is, NIW) to contravene the requirements of Regulations 30(2), 30(8), 32(1) and 32(2). These Regulations require NIW to add only substances that have been approved by the Department to the drinking water public supply.

4. Conclusion

4.1 The Department is grateful for all the responses made as part of the public consultation on the proposed Regulations. We are pleased that the proposals were well received and generally supported by the respondents. As a result of

the comments provided by respondents a number of changes have been made to the proposed Regulations.

LIST OF RESPONDENTS TO PUBLIC CONSULTATION ON THE PROPOSED WATER SUPPLY (WATER FITTINGS) REGULATIONS (NORTHERN IRELAND) 2009

| RESPONDENT NUMBER | NAME OF RESPONDENT |
|--------------------------|---|
| 1 | Disability Action |
| 2 | The Participation Network |
| 3 | Ulster Society for the Protection of the Countryside |
| 4 | Council for the Nature Conservation and the Countryside |
| 5 | Department of Health, Social Services and Public Safety |
| 6 | Down District Council |
| 7 | Limavady Borough Council |
| 8 | Northern Ireland Water (NIW) |
| 9 | Ards Borough Council |
| 10 | Consumer Council for Northern Ireland (CCNI) |
| 11 | North Down Borough Council |
| 12 | Armagh City and District Council |
| 13 | Craigavon Borough Council |
| 14 | Northern Ireland Environmental Agency – Water Management Unit |

Note: Organisations 1 and 2 made no specific comments in relation to the policy proposals and had no views on the regulations.

| ORGANISATION | ISSUE | RESPONSE |
|---|--|--|
| | 1. Do you agree that the scope of regulation 4 should be widened to include water temporarily supplied by NIW in bottles or containers during the interruption of a piped supply? | |
| 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 | SUPPORTIVE OF PROPOSALS | Temporary supplies of water provided by NIW, for example in bottles, currently meet the requirements of the water quality regulations. The proposed Regulations will require NIW to do so by law. The source of temporary supplies is always separate from the original (interrupted) source and must meet the water quality requirements. |
| 9, 11 | Agree and recommended additional items to be notified, but stated a preference that all temporary supplies come from a pre-determined “off supply” contingency plan. | |
| | | |
| | 2. Do you agree that NIW should be prohibited from supplying water from a new source without prior approval from DWI? | |
| 3, 4, 5, 6, 7, 8, 12, 13, 14 | SUPPORTIVE OF PROPOSALS | NIW already identifies alternative abstraction sources for contingency purposes. All water taken from these sources for use as drinking water must be treated to the same standards as the usual sources, as set out in law. In an emergency, |
| 9, 11 | Agrees, but it might be appropriate to | |

| ORGANISATION | ISSUE | RESPONSE |
|---|--|--|
| | identify possible abstraction sources for use in contingency situations. | where little- or un- treated water is supplied by NIW, customers would be advised of the appropriate action to be taken, for example, to boil all water before drinking it. |
| 10 | Accept - comments that consumers need adequate notification along with appropriate information in the case of exceptional circumstances. | |
| | | |
| | 3. Do you agree with the proposed requirement on NIW to supplement NIEA's monitoring programme in relation to Articles 7 and 8 of the WFD? | |
| 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 | SUPPORTIVE OF PROPOSALS | This amendment will require NIW to monitor water quality in a particular way so that the information which is collected can also be used for the purposes of Articles 7 and 8 of the WFD. This will prevent unnecessary duplication and costs. |
| | | |
| | 4. Do you agree that the current risk assessment procedures for water treatment works should be widened in scope in line with WHO Guidelines? | |
| 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 | SUPPORTIVE OF PROPOSALS | The proposed Regulations will broaden the risk assessments which must be carried out by NIW on drinking water to follow WHO Guidelines. |

| ORGANISATION | ISSUE | RESPONSE |
|--|--|--|
| | <p>5. Do you agree that powers should be available to the Department to take enforcement action against NIW if the company fails to comply with the water treatment and risk assessment requirements of new regulations 26 to 28?</p> | |
| <p>3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14</p> | <p>SUPPORTIVE OF PROPOSALS</p> | <p>In England and Wales the companies which treat and supply drinking water to customers are privately owned and operated. This means that the Government has limited direct control over the company's operations. Making enforcement a criminal offense ensures that the companies follow the Regulations. In Northern Ireland, NIW is owned by the Government and as owner the Minister for Regional Development has the power to order NIW to operate as the Government wants. Criminal offences for these regulations are therefore not considered necessary.</p> |
| <p>10</p> | <p>Agreed, but questioned why offences are only civil offences rather than criminal offences as in England and Wales legislation?</p> | |
| | | |
| | <p>6. Do you agree that the requirement on NIW to make water supply records available for inspection by `the public at all reasonable hours should be replaced by one of providing information on request within seven days and free of charge?</p> | |
| <p>3, 4, 5, 6, 7, 11, 12, 13, 14</p> | <p>SUPPORTIVE OF PROPOSALS</p> | <p>Members of the public will still be able to request water supply records in person under these proposals, as requested by CCNI. We do not accept NIW's proposal</p> |

| ORGANISATION | ISSUE | RESPONSE |
|--------------------------------|--|--|
| 8 | Agrees with suggestion that due to holidays and potential time to source information, it should be provided within 20 days. | for a twenty day period. NIW's standard service agreement currently aims to provide responses to most requests for information within ten working days. We believe that this represents a reasonable time within which to answer most requests and we will ask that NIW meets this timescale in the future. Monitoring the time it takes NIW to respond to requests is an issue for NIW's customer services. It would not be appropriate to address this issue within regulations. |
| 10 | No agreement – wants consumers to be able to ask/pick up in person, even with 7 days notice. Wants clarification in the regulations if it is 7 calendar or working days. Wants monitoring arrangements to ensure requests are processed within timescales. | |
| | | |
| | 7. Do you agree that some form of reporting by NIW, to district council, should continue in addition to the annual report given by DWI? If so, do you have any views on what form the report should take? | |
| 3, 4, 5 | SUPPORTIVE OF PROPOSALS | |
| 6, 7, 8, 9, 10, 11, 12, 13, 14 | Agreed, and provided a list of information that they would like to see | Currently, the annual drinking water quality reports issued by DWI and NIW are very similar, containing much of the same information. To prevent duplication, |

| ORGANISATION | ISSUE | RESPONSE |
|--------------|-----------------------------|---|
| | included within the report. | therefore, the contents of the NIW annual report will be amended to reflect the requests raised by the respondents. In particular, Councils asked that information be provided for their local area, rather than for Northern Ireland as a whole. These changes will be reflected in the NIW report for 2009, which will be issued in the Summer of 2010, at which time the DWI report will focus on other aspects of drinking water quality. |

NB Organisations 1 and 2 made no specific comments in relation to the policy proposals