

30 July 2007

Circular Letter: WSP 8/07

To – each City and County Manager and Director of Services (Water Services).

IMPLEMENTATION OF THE EUROPEAN COMMUNITIES (DRINKING WATER) (NO. 2)
REGULATIONS 2007

As indicated previously, an implementation working group has been established to co-ordinate implementation of the revised Drinking Water Regulations. The group includes representatives from the Department, the Environmental Protection Agency, the Health Service Executive, the Water Services National Training Group, the City and County Managers Association and the group water sector.

It was agreed during discussions at the implementation working group that, in the interests of consistency, a standard letter should be issued by each sanitary authority to the group water schemes under its remit, to provide guidance on the revised Drinking Water Regulations for the sector. The agreed standard template is enclosed with this letter, and should now be issued in a letter from your authority to each group water scheme in your area. Please insert relevant contact details before issue.

A further template for a standard introductory letter to proprietors of other private water supplies which are subject to the Regulations is being finalised in consultation with the implementation working group, and will issue to you when available.

Mise le meas,

Pat Keane
Water Services Policy Section

Copy to - Environmental Protection Agency, HSE (National Office of Health Protection), GCCC, CCMA (Water Services Sub-Committee), NFGWS, NRWMC, WSNTG, AMAI, each Regional Authority, Ombudsman's Office and Office of the Information Commissioner.

TEMPLATE FOR STANDARD LETTER TO GROUP SCHEMES FROM SANITARY AUTHORITIES

[Insert Date]

To: Named Group Scheme

A Chara,

European Communities (Drinking Water) (No.2) Regulations 2007 (S.I. No. 278 of 2007).

I enclose for your attention a copy of the European Communities (Drinking Water)(No.2) Regulations 2007 (S.I. No. 278 of 2007).

The purpose of this letter is to provide general guidance for the group scheme sector on the aspects of the new Regulations which particularly affect it. The new Regulations continue many of the requirements of the European Communities (Drinking Water) Regulations 2000, with which you should be familiar already. Requirements to formulate and implement action plans to remediate non-compliant supplies, and obligations in relation to the efficiency of disinfection equipment continue to apply, for example. There are however, additional operational requirements, particularly in relation to record-keeping, with which you will need to be familiar.

While the guidance paraphrases many of the provisions of the Regulations, it should be read in conjunction with the actual text of the Regulations. Guidance is set out under subject headings rather than strictly following the layout of the Regulations, for ease of understanding. This guidance is being issued to relevant group water schemes by every sanitary authority (i.e, county and city council; to be known as water services authorities under the recently enacted Water Services Act 2007).

APPLICATION OF THE REGULATIONS

The Regulations effectively apply to the same water supplies as the 2000 Regulations. In summary, they apply to all water supplies (whether supplied from a distribution network, a private source or a tanker or similar means) except -

- natural mineral water as defined in the European Communities (Natural Mineral Waters, Spring Waters and Other Waters in Bottles or Containers) Regulations 2007 (S.I. No. 225 of 2007),
- water supplied in bottles or containers,
- waters which are medicinal products (within the meaning of EU Council Directive 65/65/EEC of 26 January 1965),

- individual supplies of less than 10 cubic metres a day on average or serving fewer than 50 persons, provided that those supplies are not used in a commercial or public activity (such as a hotel or similar commercial outlet, for example), and
- supplies used solely for purposes in respect of which (in the view of the relevant supervisory authority) the quality of the water could have no influence whatsoever on the health of consumers.

The Regulations apply also to all water used in food production (whether in manufacturing, processing, preserving or marketing) unless the supervisory authority is satisfied that the quality of that water cannot affect the wholesomeness of the foodstuff in its finished form.

SUPERVISORY AUTHORITY

Under Regulation 3, each sanitary authority is the supervisory authority for all drinking water supplies in its area, other than its own (subject to agreed local arrangements between authorities where a supply straddles functional area boundaries, in accordance with Regulation 7(3)). The Environmental Protection Agency is the supervisory authority for the drinking water supplies of each sanitary authority, and is also required to supervise the performance by sanitary authorities of their monitoring functions under the Regulations.

Each sanitary authority (supervisory authority) is responsible under Regulation 7(4)(b) for enforcement of compliance with the Regulations by the water suppliers under its remit, and is obliged under Regulation 7(2) to monitor all related drinking water supplies. It also has general powers of direction under Regulation 16 for the purposes of its functions under the Regulations.

OBLIGATIONS ON WATER SUPPLIERS

Regulation 4 requires all water suppliers to ensure that their water supply is wholesome and clean, and that it meets the requirements of these Regulations, i.e., the various water quality parameters set out in the Schedule. In addition, water suppliers are required under Regulation 9 to comply with any direction given to them by their supervisory authority for the purpose of preventing, limiting, eliminating or abating any risk to public health in their supply.

Water which is “wholesome and clean” is defined as water which -

- is free from any micro-organisms and parasites and from any substances which in numbers or concentrations, constitute a potential danger to human health, and
- meets the quality standards specified in Tables A and B in Part 1 of the Schedule.

The provisions of the new Regulations in relation to requirements to prepare and implement remedial action plans (Regulation 10) are similar to

the 2000 Regulations, and are referred to later in this letter. Where remedial action is taken in relation to a water supply, the water supplier is required under Regulation 10(9) to inform consumers, unless the supervisory authority considers that the incident is trivial in nature or extent.

Regulation 13, as with the 2000 Regulations, obliges each water supplier, when providing new water treatment or distribution networks, to ensure that no substances or materials, or any related impurities, remain in drinking water in higher concentrations than is necessary for the purpose of their use, and that they do not in any event reduce the level of health protection afforded by the Regulations. It also obliges each water supplier to ensure that, where disinfection is part of the treatment or distribution process, the efficiency of the disinfection treatment is verified and that any contamination from disinfection is kept as low as possible subject to the disinfection process not being undermined.

Regulation 15 provides that any action taken by a water supplier under the Regulations must not under any circumstances result in a deterioration (whether directly or indirectly) of existing drinking water quality or an increase in the pollution of waters used for the production of drinking water. This also replicates an earlier provision in the 2000 Regulations.

Obligations in relation to record-keeping are addressed under a separate heading below.

PROTECTION OF PUBLIC HEALTH

When a sanitary authority considers that a supply of water is a risk to human health, Regulation 9 obliges the sanitary authority, subject to the agreement of the Health Service Executive (HSE), to ensure that use of the relevant supply is prohibited or restricted, and that consumers are informed promptly and given any necessary advice. The authority is also required, subject to the agreement of the HSE, to issue such directions to the relevant water supplier as it considers necessary to prevent, limit, eliminate or abate the risk. The water supplier is in turn obliged to comply with any such direction.

MONITORING AND REMEDIAL ACTION

General

Each sanitary authority is obliged under Regulation 7(2) to monitor all water supplies in its functional area to which the Regulations apply, and must submit a monitoring programme for this purpose to the Environmental Protection Agency for approval at such times as the Agency may direct.

Regulation 10(1) obliges each water supplier to investigate immediately any failure to meet the quality standards set out in Part 1 of the Schedule. Awareness of such non-compliance may follow monitoring of the supply by the sanitary authority in the first instance. However, where a water supplier (or its DBO appointed contractor) itself discovers a non-compliance,

Regulation 10(2) obliges the supplier to inform the sanitary authority. Pending the issue of further guidance for this purpose, you should in such circumstances inform this authority of any non-compliance with the parametric values listed in Part 1 of the Schedule of the Regulations of which you become aware.

Remedial Action Programme

Requirements in relation to the undertaking of remedial action are similar to those which applied under the 2000 Regulations, but with responsibility for specific actions by supervisory authorities and water suppliers now more clearly set out in the new Regulations.

Regulation 10(4) specifies the intervention necessary for the purposes of remedial action. The sanitary authority is required to ensure that remedial action is taken by the relevant water supplier as soon as possible. Within 14 days of receiving an adverse monitoring result in a water supply for which it has supervisory responsibility, the sanitary authority must direct the water supplier to –

- prepare an action programme to secure compliance with the Regulations,
- submit it to the authority for approval within 60 days, and
- implement it as soon as possible but not later than -
 - one year from the date of its approval by the sanitary authority in relation to quality standards specified in Tables A and B in Part 1 of the Schedule where risk to human health arises, or
 - two years from the date of its approval by the sanitary authority in relation to quality standards specified in Table B in Part 1 of the Schedule, where risk to human health does not arise.

Such an action programme is also required where indicator parameters in Table C of Part 1 of the Schedule are breached, but only where the sanitary authority considers that the non-compliance poses a risk to human health.

Action programmes must specify appropriate interim measures, and must have regard to the provisions of any strategic water supply plan made by the sanitary authority for the area in question. This authority will be in a position to advise you on this should the need arise.

The sanitary authority may, before approving a proposed action programme which has been submitted to it, amend the programme as it considers appropriate.

Duty to Inform Consumers

Where remedial action is taken by a water supplier as outlined above, Regulation 10(9) obliges the supplier to inform consumers of any such action. However, for practical operational purposes, it also provides that such action is unnecessary where the sanitary authority considers that the non-compliance is of a trivial nature.

For the purposes of Regulation 10(9), this authority will assess each such instance and direct you as to the appropriate action to take.

RECORDS TO BE MAINTAINED BY WATER SUPPLIERS

Regulations 8(1) and 10(10) place specific record-keeping obligations on water suppliers.

Regulation 8(1) enables the sanitary authority to direct a water supplier to keep such records as it may specify, and to submit such information to it (in such manner and at such times and in such circumstances) as it may direct in relation to

1. management and treatment of water intended for human consumption,
2. monitoring of compliance with water quality standards,
3. corrective action taken following a non-compliance, and
4. verification of the efficiency of disinfection treatment.

Water suppliers are requested to take steps to ensure that records are compiled and maintained for this purpose. For water suppliers with DBO contracts in place, many of the records required in relation to the treatment of water will already be in place under the Operation and Maintenance Contract and the Performance Management System (PMS). Where a DBO contractor is engaged, the Monthly Status Report required by the PMS should be retained, and contractors should be notified of the requirement to have records available for inspection by this sanitary authority. Further guidance will be provided on an individual scheme basis as required.

The sanitary authority is required to carry out such verification as it considers necessary on the records maintained under Regulation 8(1). Records should be available at a convenient location for review by this authority if required.

Regulation 10(10) requires each water supplier to maintain a record of any incidence of non-compliance with the quality standards in Part 1 of the Schedule, including –

- the date of each incident
- the extent and duration of the failure
- the cause of the failure, and
- details of any complaint received arising from such failure.

Where not already in operation, recording of all incidents should commence immediately.

MONITORING RECORDS

Regulation 8(4) requires each sanitary authority to maintain up to date records on an ongoing basis of monitoring results, relating to the quality of all relevant water supplies. Please also note that Regulation 8(7) requires

such records to be made available to the public for inspection during normal office hours. It is envisaged that they will also be available electronically in due course.

REGISTRATION

Regulation 8(3) requires each sanitary authority to keep a register to record basic operational details for each water supply for which it has supervisory responsibility. The register must record at a minimum the name and address of the supplier, the volume of water supplied and details of the water source and type of treatment in place. The sanitary authority must also allocate a unique identification code to each supply. To enable this sanitary authority to develop such a register you are requested to arrange for completion of the attached Registration Form, and return it to the undersigned by **[insert date before issue]**. If you have any queries, please contact me so that I may assist you to complete the form if necessary.

ENFORCEMENT

Sanitary authorities have significant additional enforcement powers compared to those provided for in the 2000 Regulations:

- Regulation 16 enables a sanitary authority to give such binding directions as it considers appropriate for the purposes of fulfilling its functions.
- Regulation 19 provides for the power of authorised persons to enter premises for the purposes of their functions under the Regulations, and to bring with them such persons and equipment, and, carry out such work as they consider necessary.
- Powers of summary prosecution under Regulation 22, and powers under Regulation 18 to obtain injunctive relief in the High Court where a person fails to comply with a direction or a requirement under the Regulations.
- Regulation 22 also provides for prosecution of offences on indictment, where a breach of the Regulations is considered to be sufficiently serious to warrant such action.

Regulation 12(2) enables a sanitary authority to intervene directly, where a water supplier fails to comply with a direction under Regulation 12(1) for the purpose of achieving compliance with the water quality standards of the Regulations or to comply with a direction under Regulation 9 for the purposes of public health protection. In such circumstances the authority may itself undertake any necessary action (or arrange for such action to be carried out) as it considers necessary to achieve compliance with its requirements, and recover the costs from the water supplier.

It should be emphasised that Regulation 12(1) also enables the sanitary authority to provide such assistance and support as it considers would be helpful, on such terms and conditions as may be agreed, in consultation with the water supplier. The explicit provision for consultation with the water

supplier in relation to the provision of assistance reflects the intention behind this provision. A key focus of the sanitary authority's supervisory role under the Regulations is to support the ongoing development, management and operation of your water supply scheme, and to assist you to comply with the requirements of the Regulations.

It is envisaged that the power of direct intervention under Regulation 12(2) would be used only as a last resort, in the event of continued refusal or failure by a water supplier to comply with the requests of a sanitary authority, or where direct and urgent intervention is necessary in the interests of protecting public health (where for example a water supplier itself is unable to rectify a particular problem in the water supply).

Similar provisions are included in the recently enacted Water Services Act 2007. The Regulations provide in effect for interim arrangements pending the introduction and implementation of water services licensing under the Act in due course.

WATER QUALITY STANDARDS

The water quality standards specified in Part 1 of the Schedule remain unchanged from the 2000 Regulations, with the exception of the standard for fluoride in artificially fluoridated supplies which is reduced to a maximum of 0.8 milligrams per litre with effect from 1 July 2007.

DEPARTURES FROM STANDARDS

As with the 2000 Regulations, departures from quality standards prescribed under the Regulations may be granted by the Environmental Protection Agency under Regulation 11, subject to the agreement of the HSE. The grant of a departure is subject to two provisos, i.e., that –

- it will not constitute a potential danger to human health, and
- the supply of drinking water in the area concerned cannot be maintained by other reasonable means.

It is a matter for the sanitary authority in the first instance to apply to the Agency for a departure in relation to any water supply concerned.

AUDITS

Regulation 17 requires each sanitary authority to undertake an audit of water supplies for which it has supervisory responsibility. The requirement is subject to any guidelines issued by the Environmental Protection Agency on the frequency and content of audits.

The purpose of an audit is to ensure that periodic detailed reviews are carried out on all water supplies on an ongoing basis. It is envisaged that the exercise will mirror similar audits currently undertaken by the Agency on sanitary authority supplies. This authority will be in further contact with you for this purpose in due course.

CONCLUSION

If you have any queries in relation to the operation or application of these Regulations, or if you consider that your supply is not subject to the Regulations, please contact the undersigned.

The following are my contact details should you require any clarification:
Telephone **[to be inserted]**; Email **[to be inserted]**.

Mise le meas

[insert name]
Director of Water Services

European Communities (Drinking Water)(No. 2) Regulations 2007

REGISTRATION FORM

NAME OF SCHEME: _____

CONTACT ADDRESS: _____

TELEPHONE: _____ EMAIL: _____

DESIGNATED KEY OPERATIONAL CONTACT : _____

POSITION: _____ TELEPHONE: _____

VOLUME OF WATER SUPPLIED PER DAY: _____
(expressed either in cubic metres or a population equivalent)

TYPE OF WATER TREATMENT AND DISINFECTOIN ARRANGEMENTS
IN PLACE (continue on separate page if necessary) :

SOURCE OF THE WATER SUPPLY : _____
(e.g name of lake or river; groundwater, etc.)

LOCATION OF ABSTRACTION POINT: _____
(include map reference or attach map)

I confirm that the above details are accurate and complete to the best of my knowledge.

Signed: _____

Position:

Date:

SUPPLY CODE _____
(to be inserted by sanitary authority)