POLICY NOTE

THE PUBLIC WATER SUPPLIES (SCOTLAND) AMENDMENT REGULATIONS 2022

SSI 2022/XXX

This instrument is made in exercise of the powers conferred by sections 76B, 76J, 101(1) and (1A) and 109(1) of the Water (Scotland) Act 1980 and section 1(1) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. The instrument is subject to the affirmative procedure.

Purpose of the instrument.
The Public Water Supplies (Scotland) Amendment Regulations 2022 ("the Regulations") amend the Public Water Supplies (Scotland) Regulations 2014 ("the principal Regulations") to implement partially Directive (EU) 2020/2184 on the quality of water intended for human consumption ("the recast Directive), and they also address deficiencies in the 2014 Regulations arising from EU Exit and make further minor amendments.

Policy Objectives

The main purpose of the Regulations is to amend the principal Regulations to implement certain requirements of the recast Directive. The recast Directive is designed to protect water intended for human consumption ("drinking water") from source to tap, put in place measures in relation to access to water and drive up resource efficiency by tackling pollutants at source. It came into force on 12 January 2021 and replaces Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption.

The principal Regulations implement both the previous drinking water Directive 98/83/EC and Council Directive 2013/51/Euratom laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption in respect of drinking water supplied by Scottish Water. The principal Regulations were made using section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 (together with enabling powers under the Water (Scotland) Act 1980 and the Finance Act 1973) and are therefore retained EU law. They require that drinking water supplied by Scottish Water does not contain certain substances (microbiological and chemical parameters) and that Scottish Water monitors drinking water supplied by it for specified substances (indicator parameters).

While the recast Directive retains much of the Council Directive 98/83/EC, it also introduces new requirements. Following recommendations from the World Health Organisation, the recast Directive includes new chemical parameters, such as PFAS[1] (commonly known as forever chemicals) and endocrine disrupting chemicals[2], that drinking water must not contain and updates the values of existing indicator parameters. The principal Regulations are amended to include the new chemical parameters and updated indicator parameters and the applicable methods of analysis. The inclusion of these parameters ensures that the requirements in the

[1] Per-fluoroalkyl substances are used widely as they have non-stick and water repellent properties and are designed not to breakdown when in contact with water.
[2] Endocrine disrupting chemicals are chemicals that mimic, block, or interfere with hormones in the body's endocrine system.

principal Regulations keep pace with the latest advice on health based standards for drinking water. The recast Directive also introduces new specifications on when a water supplier may deviate, following a risk assessment, from minimum sampling frequencies of drinking water and the requirement that water suppliers maintain an operational monitoring programme. These requirements are introduced to ensure that levels of monitoring are proportionate to the risks identified through the risk assessment process.

Approach to alignment with recast Directive

The Scottish Government is committed to aligning with the health based standards (the new chemical and indicator parameters) of the recast Directive, which are also recommended by the World Health Organisation. Aligning with these aspects of the recast Directive by 1 January 2023 will enable better reporting of drinking water standards in Scotland and ensures that there is a full water sampling record for 2023 allowing comparison to be made year on year. The requirements of the recast Directive in relation to the deviation from minimum sampling frequencies and operational monitoring programmes are also aligned with from that date.

This approach to alignment is considered appropriate because it focuses on further improving the excellent standards of Scotland's drinking water that it shares with other EU partners and prioritises the improvements that can be made now. There are some requirements in the recast Directive that will apply at a later date or are dependent on further action by the European Commission, such as:

- the European Commission has until 12 January 2024 to adopt technical guidelines regarding the methods of analysis applicable to microplastics and PFAS compounds;
- as part of the EU work to transfer approvals of products and materials in contact with water to the European Chemicals Agency, the European Commission has until 12 January 2025 to set out in an Implementing Decision the first "positive lists" for approval of products and materials that may come into contact with drinking water; and
- requirements for the completion of risk assessments in accordance with the recast Directive apply either from January 2027 or 2029.

Our approach is to consider further alignment of our legislation at a later stage, which would nonetheless result in the same outcomes as implementing the measures within the same timescales as EU member states.

Effect of the Regulations on retained EU law

Chemical parameters and indicator parameters

The chemical and indicator parameters are amended. Table B and Table C of schedule 1 are replaced. Part B and Part C of Annex I of the recast Directive contains new chemical and indicator parameters that drinking water must either not contain or be monitored for. The Regulations amend schedule 1 of the principal Regulations by replacing Table B and Table C (and the notes to those tables) with new tables that contain the new and/or updated parameters of the recast Directive. The definitions for schedule 1 are also amended to align with those in the recast Directive.

Methods of analysis

Annex III of the recast Directive sets out how parameters in Annex I are to be analysed. The Regulations amend schedule 3 to the principal Regulations by replacing Table 1 of that schedule with a new table that contains the minimum performance characteristics specified in Table 1, Part B of Annex III of the recast Directive. Table 2 is omitted from schedule 3. The applicable methods of analysis for microbiological parameters are also amended to include the methods of analysis specified in Part A of Annex II of the recast Directive.

Monitoring

The recast Directive requires that an operational monitoring programme is conducted by water suppliers. The Regulations amend Part A of schedule 1A to the principal Regulations to require that each monitoring programme of Scottish Water includes an operational monitoring programme that confirms the effectiveness of measures in place to control risks to human health throughout the water supply chain. Under the principal Regulations, Scottish Water can modify a monitoring programme to provide additional monitoring or reduce the level of a monitoring required by the programme. A modification of a monitoring programme must meet the requirements of Part C of schedule 1A to the principal Regulations. The Regulations amend regulation 6(7) and Part C of schedule 1A to the principal Regulations to align with new specifications of the recast Directive. The conditions in Part C are amended to enable Scottish Water to modify a monitoring programme, following the results of a risk assessment, to increase the minimum sampling frequencies of a monitoring programme, or remove a parameter or decrease the monitoring frequency of an existing parameter in a programme. The removal of a parameter or reduction in the sampling frequency of a parameter requires the consent of the DWQRS.

Procedure following a risk assessment or review of a risk assessment

Regulation 31 of the principal Regulations requires that Scottish Water submit a copy of its risk assessment, or review of a risk assessment, to the Scottish Ministers. Where a risk assessment, or review, establishes a risk of suppling unwholesome water, Scottish Water must submit a report to Scottish Ministers who may then give notice to Scottish Water requiring it to take specified actions. The Regulations remove these functions from the Scottish Ministers and transfer them to the DWQRS. Under regulation 31(3) (as amended), the DWQRS can by notice given to Scottish Water require is to specified measures to mitigate the risk of supplying drinking water that is unwholesome. These amendments reflect that, in practice, it is the DWQRS that is best placed to review risk assessments, associating identified risks with regulatory monitoring data and directing Scottish Water as to suitable actions to mitigate or address an identified risks.

Omission of power to request extension of an authorisation of a temporary departure from European Commission

Regulation 25(7) of the principal Regulations allows Scottish Ministers to request the European Commission to grant a second extension of an authorisation of a temporary supply of water that is not wholesome. The Regulations remove this process and references to it from the principal Regulations. While this is a necessary amendment following EU Exit, the recast Directive also no longer makes provision for the European Commission to extend these authorisations of temporary departures from standards. Consequently, the effect of the principal Regulations will be that an authorisation of a temporary departure from the requirement that

drinking water supplied by Scottish Water does not contain a chemical parameter may now be extended only once by the Scottish Ministers.

Sampling of water supplied by tanker and mobile tanker

The provisions on sampling in relation to water supplied by tanker in regulation 13 of the principal Regulations are amended. The amendments require Scottish Water to sample water supplied by tanker at an increased frequency: when water is put into the tanker, 24 hours after commencement of distribution from the tanker and every 24 hours from then on. Regulation 13 is also disapplied in relation to the distribution of water by mobile tanker which is covered regulation 13A (as inserted by regulation 7 of the Regulations). Regulation 13A sets the sampling requirements applicable to water supplied by mobile tanker. This responds to an increasing use of mobile tankers by Scottish Water to maintain supplies to customers in response to severe weather, large incidents such as burst water mains or asset failures and reflects additional risk to the quality of water supplied which Scottish Water is required to actively manage and demonstrate that it has done so.

Substitution of Consumer Scotland

Regulations 24 and 28 of the principal Regulations requires that information relevant to the authorisation of a temporary supply of water that is not wholesome is provided to the Scottish Association of Citizens Advice Bureaux. The Regulations make amendments so this information must now be provided to Consumer Scotland which is assuming consumer functions in relation to water.

Statements required by UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021

The necessary statements under the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 are contained in the Annex to this policy note.

Consultation

The Water Policy Division has adopted a collaborative approach to the policy development process. When understanding how best to align with the recast Directive in the best interests of Scotland, key stakeholders have been involved in a project steering group as well as several subsequent working groups. Stakeholders include the DWQRS, Scottish Water, Water Industry Commission for Scotland, Scottish Environment Protection Agency, Consumer Scotland as well as representatives from local authorities. This is to ensure that policy is developed in a proportionate and flexible way. The amendments made by the Regulations will impact operational matters of Scottish Water and the DWQRS. On this basis, a limited consultation took place from 6 to 27 September 2022 with Scottish Water and the DWQRS.

Impact Assessments

Full impact assessments have not been prepared for this instrument. The impact of this instrument is considered likely to have a positive impact as they ensure alignment of health based standards, recommended by the World Health Organisation, and reflect the current advice on drinking water standards. The amendments do not alter Scottish Government's

current environmental policies and priorities and, therefore, do not have an impact on the environment. There are no impacts on business, charities or voluntary bodies.

Financial Effects

A BRIA has been conducted detailing that the instrument has no financial effects on the Scottish Government, local government or on business and given that these are health based measures recommended by the World Health Organisation, there are no options to consider. Scottish Water will require less than £10m to improve the storage of chemicals in order to meet the Chlorite and Chlorate standards. These upgrades can be funded as part of the £800m annual capital programme. Scottish Water will also incur additional costs associated with the monitoring of new parameters and changes to operational monitoring programmes. New provisions which allow the frequency of monitoring of individual parameters to be reduced or removed altogether in the light of a risk assessment, and as agreed with the DWQRS, ensure that costs will be kept to the minimum necessary.

Scottish Government
Energy and Climate Change Directorate
October 2022

Annex

Statements required when using section 1(1) of UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021

Statement explaining: (a) the instrument or draft, (b) why, in the Scottish Ministers' opinion, there are good reasons for making the provision contained in the instrument or draft, (c) the law before IP completion day which is relevant to the provision, and (d) the effect (if any) of the provision on retained EU law

The statement explaining the Public Water Supplies (Scotland) Amendment Regulations 2022, why there are good reasons for making the provision, the law before IP completion day and the effect on retained EU law has been made in the policy note under the sections on policy objectives and effect of the Regulations.

Statement explaining the effect (if any) of the instrument or draft on: (a) the Convention rights within the meaning of section 1 of the Human Rights Act 1998, and (b) other human rights contained in any international convention, treaty or other international instruments ratified by the United Kingdom

The Minister for Environment and Land Reform, Máiri McAllan, has made the following statement "In my view the Public Water Supplies (Scotland) Amendment Regulations 2022 do not have any effect on Convention rights within the meaning of section 1 of the Human Rights Act 1998 or any human rights contained in any international convention, treaty or other international instruments ratified by the United Kingdom.".

Statement: (a) as to whether the instrument or draft amends, repeals or revokes any provision of equality legislation, and (b) if it does, explaining the effect of each such amendment, repeal or revocation.

The Minister for Environment and Land Reform, Máiri McAllan, has made the following statement "In my view the Public Water Supplies (Scotland) Amendment Regulations 2022 do not amend, repeal or revoke any provision of equality legislation.".

Statement to the effect that, in relation to the instrument or draft, the Scottish Ministers have, so far as required to do so by equality legislation, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010

The Minster for Environment and Land Reform, Máiri McAllan, has made the following statement "In my view, in relation to the Public Water Supplies (Scotland) Amendment Regulations 2022, the Scottish Ministers have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.".

Statement explaining the effect (if any) of the instrument or draft on: (a) rights and duties relating to employment and health and safety, (b) matters relating to consumer

protection, so far as it is within devolved competence (within the meaning of section 54 of the Scotland Act 1998) for the instrument or draft to have any such effect

The Minster for Environment and Land Reform, Máiri McAllan, has made the following statement "With respect to matters relating to consumer protection, the Public Water Supplies (Scotland) Amendment Regulations 2022 amend the Public Water Supplies (Scotland) Regulations 2014 to require information to be provided to Consumer Scotland as part of the process for granting authorisations of a temporary supply of water which is not wholesome.".

Statement: (a) as to whether, in relation to the instrument or draft, the Scottish Ministers have consulted: (i) such persons appearing to them to be representative of the interests of local authorities, (ii) any other person, and (b) if they have, setting out details of the consultation that they carried out

The statement as to whether, in relation to the Public Water Supplies (Scotland) Amendment Regulations 2022, Scottish Ministers have consulted such person appearing to them to be representative of interests of local authorities and any other persons has been made in the policy note under the section on consultation.

Statement setting out the likely financial implications of the provision contained in the draft

The statement setting out the likely financial implications of the Public Water Supplies (Scotland) Amendment Regulations 2022 has been made in the policy note under the section on financial effects.

If the instrument or draft (a) is laid before a policy statement is published under section 6(1), (b) is laid during the period beginning with the day on which a copy of a revised policy statement is laid before the Scottish Parliament under section 7(1) and ending with the day on which the revised policy statement is published under section 6(2) or (3)(b)(i), or (c) contains provision that involves using the power under section 1(1) in a way that is not in accordance with the policy statement published under section 6, a statement explaining why, in the Scottish Ministers' opinion, there are good reasons for laying the instrument or draft at that time or, as the case may be, for using the power in that way

This is not applicable to the Public Water Supplies (Scotland) Amendment Regulations 2022.