

ANGUS COUNCIL

ENVIRONMENTAL AND CONSUMER PROTECTION COMMITTEE – 19 FEBRUARY 2002

SCOTTISH EXECUTIVE CONSULTATION – PRIVATE WATER SUPPLY REGULATION

REPORT BY DIRECTOR OF ENVIRONMENTAL AND CONSUMER PROTECTION

ABSTRACT

This report details the response to the Scottish Executive consultation document on the regulation of private water supply in Scotland.

1. RECOMMENDATION

It is recommended that the Committee agree with the comments and views expressed in this report as the Council's response to the points of consultation outlined in the Scottish Executive document "Private Water Supply Regulation".

2. INTRODUCTION

A private water supply is defined as "any water supply that is not provided by a statutory water undertaker and in which the responsibility for its maintenance lies with the owner or person who uses the supply".

Private water supplies are already regulated through local authorities by the Private Water Supply (Scotland) Regulations 1992.

The Scottish Executive have recently issued a consultation document which represents the current thinking behind the development of policy for the implementation of the EC Directive 98/33/EC for drinking water quality and at the same time seeks to determine views on the possible changes in the national regulations that will apply to private water supplies not covered by the Directive. The Scottish Executive stress that the consultation is at an early stage and that final policy decisions will be informed by the responses to the consultation exercise.

3. BACKGROUND TO REVIEW

In Scotland approximately 83,100 people (1.5% of the population) are served by private water supply for their domestic use with a further 68,700 supplies serving commercial activities such as food production, or in hotels, camp sites etc.

The quality of the drinking water from private water supplies is generally below the standard required from the public water system and this has a consequence for public health with studies suggesting the risk of contracting disease from private water supplies as being 22 to 50 times more likely than from the mains supply.

The Scottish Executive in their consultation consider the existing regulation arrangements are not sufficient to ensure adequate enforcement. The local authorities currently only have powers to enforce the private water supply regulations. The document considers this to be inadequate, suggesting that provision will need to be made to place a duty on local authorities to enforce the regulations in respect of those private water supplies covered by the Drinking Water Directive.

4. ANGUS COUNCIL RESPONSE

Point 1 - *Should all private water supplies be (a) regulated by local authorities under a duty on the local authority, or (b) should such duties only apply to larger supplies serving more than 50 persons or supplies associated with commercial activity.*

Option b) is preferred and, in many ways, will give greater control over the supplies which cause most concern.

If implementation was extended to all supplies, then this would remove flexibility and discretion in dealing with the smaller supplies. It would also have considerable resource implications for local authorities. Indeed, implementation with regard to these larger/commercial supplies could be problematic.

In addition, the burden upon smaller supplies, especially Class F's, would probably be excessive.

Point 2 - Relevant person against whom enforcement action will be taken.

Option 2A: The relevant person (against whom enforcement will apply) will be the owner of the land on which the source of the supply is located.

Option 2B: The relevant person (against whom enforcement will apply) will be the owner of the property in which the breach of Regulations was identified.

It is not felt that this should be a case of either/or options. Responsibility can be a complex issue and there may be more than one relevant person. Contamination may not occur at the source, but at collection tanks, pipe work, etc. Thus the owner of the source may have no control over these. Likewise, if contamination does occur at the source, what powers would the property owner have to rectify matters?

It is felt that the definition of "relevant person" in section 76(G)(7) of the Water (Scotland) Act 1980 is adequate and should continue to be used.

NB - the consultation makes reference to owners of land on which the source of supplies are located having charging schemes. Not all of them do so and water may be supplied under all sorts of arrangements. If such an owner decides to withdraw a supply to property owners, will the new legislation provide powers to deal with the situation or will it continue to be treated as a civil matter?

Point 3 - Provision of water unfit for human consumption will be made a criminal offence.

In favour of such a provision, however, a definition of "unfit" would be necessary to differentiate from "unwholesome" (see point 6). Would the presence of actual pathogens be necessary, rather than indicator organisms? Would specific chemicals at excessive concentrations be required? Public Analysts would particularly require guidance before they'd be willing to commit themselves to stating water was unfit.

Guidance would also require to be provided for local authorities to clarify under what kind of circumstances this provision is expected to be used. For instance, would it be appropriate where carcasses are found floating in a supply source, regardless of what the analysis reveals?

NB - The consultation document states that primary legislation would be required. Could Section 76C of the Water (Scotland) Act 1980 not be amended to extend the offence to more than just water authorities?

It is assumed that this provision would apply to all supplies, not just those covered by the Directive. (albeit as a power, rather than a duty, for those not covered by the Directive).

Point 4 - What form, if any, should financial support take for those private water supplies requiring Improvement?

Option 4A: Should users/owners of private water supplies be responsible for financing improvements?

Option 4B: Should the Quality and Standards (Q&S) process encourage water authorities to adopt private water supplies?

Option 4C: should other possible funding mechanisms for improvement of private water supplies not covered under the Q & S process be considered?

Option C preferred

Adoption of option A would not only place a significant burden on some owners but many would probably find themselves in a situation of non-compliance. This would result in the need for enforcement which would not only have resource implications for local authorities, but would create entirely the wrong environment for motivating supply owners to want to maintain their supply in optimum condition.

Adoption of option B could presumably have resource implications for water authorities and increase staff resource requirement for local authorities, despite only benefiting a relatively small number of supplies.

It is suggested that the Executive provides funds for a scheme similar to the Improvement Grant Scheme, but 'ring fenced' and not subject to the same restrictions re eligibility (non-commercial, age of property, Council Tax band etc.) i.e. it should be available for all private supplies.

Point 5 - Local authorities shall have a duty to provide support and education to users of private water supplies.

This should be a power, not a duty. If this were a duty, then there would be resource implications for local authorities, including additional staff and training.

Point 6 - *The register of private water supplies compiled by local authorities shall be updated taking cognisance of the requirements of Directive 98/83/EC.*

Accepted, though, as the consultation document points out, there will be an administrative resource issue in ensuring staff keep files up to date.

Point 7 - *Provision of unwholesome water will constitute a breach of the Regulations.*

In favour. However, it is felt that this should also be applied to supplies not within the scope of the Directive, with local authorities having the power (as opposed to duty) to apply Section 76 (G) as at present.

Point 8 - *Adoption of a microbiological risk protocol to identify risk from Cryptosporidium to private water supplies covered by Directive 98/83/EC.*

Why should a microbiological risk assessment (MRA) be restricted to risk of Cryptosporidium?

Are we to assume that the MRA procedures will be the same as for point 11? If so, then comments below will also apply for this point. If not, what kind of procedures are envisaged? Clarification is required for the last sentence of the Rationale.

What powers would be available if the MRA identified high risk contamination from livestock on land owned by someone having no association with the supply?

Point 9 - *Parameters and sampling frequencies for use with the Private Water Supply Regulations.*

From an Angus perspective, the sampling frequency/parameters for Class 4 would, if anything, be less onerous than at present, those for classes 5, 6 and 7 would be considerably more than at present. If replicated in other areas, this will not only result in a significant staff resource problem for local authorities, but also a significant increase in sampling charges for relevant persons, which will lead to more friction between the owners of property with a private water supply and the local authority.

Point 10 - *Regulation to include a requirement for commercial undertakings and public buildings to prominently display their current water quality test results.*

We see minimal value from introducing this requirement other than for changes to residencies and commercially let holiday cottages. Additional visits to check for compliance alone, could not be justified - it would have to be done at the same time as sampling visits.

Point 11 - *Application of a microbiological risk assessment protocol for the protection of the sources of private water supplies.*

Whilst the value of applying an MRA protocol to supplies covered by the Directive can be appreciated, making this a requirement for the rest of the supplies, particularly small ones, cannot be supported for several reasons.

The resource implications for local authorities would be very significant and, at the very least, Government funding would be essential to enable additional staff to be acquired to meet this added burden. As stated already, for local authorities to meet their costs by charging owners of private supplies, is an unsatisfactory process. At any rate, local authorities would initially incur considerable expenditure ahead of recouping costs. It is also unlikely that charges could be calculated until MRA's had been carried out.

The financial burden on owners of small supplies could outweigh the possible benefits.

There is no guarantee that carrying out works identified by an MRA will ensure wholesome water. This has been borne out by experience of sampling supplies in the past after remedial works have been carried out. Ultimately, treatment is often the only solution. In such cases, the local authority could be heavily criticised for the charges associated with carrying out the MRA. In addition, any subsequent enforcement to achieve a wholesome supply would be heavily undermined.

The local authority's position would be severely compromised in the event of water-borne illness being associated with a supply for which an MRA had been carried out.

A preferred option would be for local authorities to have the power (not duty) to require relevant persons to carry out an MRA where sample results have revealed the supply to be unfit/unwholesome or it is suspected to have been the source of water-borne infection.

Point 12 - *Financial support for improving source protection or provision of point-of-use/point-of-entry devices on private water supplies.*

This also has a bearing on Point 4 above and further consultation would be appreciated. As Annex B relates to sampling frequencies, it is presumed, that the reference to it in the first sentence of the Rationale should read Annex A.

Point 13 - *Should private distribution systems carrying water from the public network (a) be adopted by the water authority or, (b) remain in private ownership?*

Option a) would be preferable as this could resolve innumerable disputes over responsibilities for repairs, pro rata charges on shared owners/users etc.

Point 14 - *Assuming private distribution systems remain private, are consumers who receive water from the public network through private distribution systems on (a) a private supply, with quality regulation carried out by the local authority or, (b) the public supply, with quality regulation carried out by the Scottish Executive?*

Arguments could be made for either option, but option b) would make more sense as the Scottish Executive already regulate the quality of the water provided to these distribution systems.

Point 15 - *Should (a) a water authority be collecting Council Tax water charges when it has no control over the quality of the water delivered or, (b) the landowner/estate be paying water charges based on the metered charge for water delivered to the private system with this cost being shared out between the users?*

If the Water Authority adopted the distribution systems, then these questions would not be relevant. If they don't, then option b) seems more appropriate.

Point 16 - *Should an additional duty of care be placed on a building owner to ensure that water quality is not degraded where water supplies are taken from the public supply, through break pressure systems, and then re-supplied to occupants of tower blocks?*

Water Authorities should be empowered to adopt all such tanks, break pressure systems etc. If this is not feasible, then the duty of care should be placed upon the person(s) responsible for each of these units, rather than the building owner. There may be more than one such person and responsibility may not always be straight forward.

Point 17 - *Should (a) a water authority be collecting Council Tax water charges when it has no control over the quality of the water delivered or, (b) the owner of the block of flats be paying water charges based on metered charge for water delivered to the underground tank with this cost being shared out between the users?*

Similar response to that for Point 15. Apportionment amongst users may be complicated and it may be difficult to ensure fairness (eg. large family as opposed to single or elderly occupant).

Point 18 - *Should we place a duty of care on owners of properties in tenemental blocks to replace lead rising mains that are in joint ownership with others?*

Yes. Everything that can be done should be done to eliminate/minimise the risk of lead contamination to consumers.

Point 19 - *Should the local authority, who usually supervise common repairs done under statutory notice, be required to include the elimination of lead pipework in the specification of works?*

Yes, for the same reasons as stated in point 18 above.

Point 20 - Should the legislation (a) be amended to specify that public water supply systems do not start until the raw water reaches the treatment works or, (b) continue to consider that water supplies taken from raw water mains are part of the public water supply network?

Raw water provided to properties before treatment should be treated as a private supply with the Water Authority treated as the landowner responsible for the source.

5. FINANCIAL IMPLICATIONS

There are no financial implications as a consequence of this report.

However, dependent on the outcome of the review and the extent of implementation of the proposals, there could be significant resource implications for the Council. It is highly unlikely that the existing Environmental Health staff resources could cope with this additional burden and specifically, the consultation points which could have resource implications include:-

Point 1 – if duty to regulate is extended to all supplies.

Point 4 – implementing a grant scheme or pursue enforcement with owners who can't/won't pay for improvements without grant (provisions to carry out works in default)

Point 5 – providing significant support/education

Point 8 & 11 – conducting microbiological risk assessments.

Point 9 – increased sampling/inspection frequencies/test parameters

Point 10 – regular checks on notices.

Point 14 – the addition of private distribution systems classified as private supplies to be regulated by local authorities.

Point 20 – the added work of regulating raw water prior to treatment if classified as a private supply.

The system currently in place, whereby Councils recover costs from owners/users of supplies by direct charge for sampling and tests has been problematic resulting in additional administrative burdens and disputes over payments.

Any intention to apply the same system as a means to finance an enhanced service will add additional burdens on local authority administration and alienate more than ever the users of private water supplies. An alternative method of financing private water supply regulation has to be found preferably through direct grant from the Scottish Executive.

6. HUMAN RIGHTS

There are no Human Rights issues associated with this report.

7. CONSULTATION

The Chief Executive, Director of Finance and Director of Law and Administration have been consulted on the contents of this report.

S R Heggie
Director of Environmental and Consumer Protection

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing this report.

IW/FMCI
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