



guardians of drinking water quality

## DRINKING WATER INSPECTORATE

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DWI Information Letter 10/2010

### **To: Day to Day contacts of Water and Sewerage Companies, Water Companies and licensed water suppliers in England and Wales**

Dear Local Authority Colleagues

#### **Guidance on using contractors to deliver Local Authority duties under the Private Water Supplies Regulations**

##### **Background**

The Drinking Water Inspectorate has been asked to provide Guidance about the use of contractors by local authorities in relation to the to the Private Water Supplies Regulations 2009 in England and the Private Water Supplies (Wales) Regulations 2010. Some local authorities may have contracts in place in relation to duties under the former regulations and be planning to continue with these arrangements. If this is the case then the arrangements need to be reviewed and updated in light of the new regulations and associated Guidance.

This letter aims to clarify how the local authorities may work with contractors, consultants and other partners such as Ministry of Defence (MoD), Hospitals, National Trust in relation to;

- Sampling, analysis and data provision
- Risk assessment
- Failures to meet drinking water standards and serving notices

##### **Sampling, analysis and data provision**

The Regulations allow local authorities to employ contractors to carry out sampling and analysis on its behalf provided they are satisfied that these persons are competent. Detailed guidance on competency is available on [www.dwi.gov.uk](http://www.dwi.gov.uk) in "The Legislative Background to the Private Water Supply Regulations Section 9 [England and Wales]". Section 2.3.5.10 of the Guidance refers to competency in relation to sampling however the same principles apply to assessment of general competency in relation to the duties under the Private Water Supply Regulations. The important point in law is that the decision about competency is for the local authority to make and such decisions should be recorded and the approach to decision making documented. Once the local authority is satisfied with the competency of the contractor, then the local authority must put in place formal arrangements so each contractor complies with Schedule 3 Part 1, 4(2) (b)) of the regulations. This means the contractors must inform the local authority of the following events:-

- Each and every breach of a standard – communicated immediately
- All other results – communicated within 28 days

Local authorities need to receive results indicating a breach of standard immediately in order to comply with the duty to decide if a supply is a potential danger to human health and where appropriate to serve a regulation 18 notice. Local authorities cannot contract out their duty to serve notices in such circumstances and any agreement with a contractor needs to recognise and facilitate such duties.

The frequency of sampling is dependent on the requirements of the Regulations in Schedule 2 [Part 1 (Check monitoring) and Part 2 (Audit monitoring)]. This frequency is based on volume of water supplied. The choice of parameters on the Check monitoring list is dependent upon the nature of the supply. These decisions can only be taken by the local authority. The choice of parameters on the Audit monitoring list is based on the risk-assessment of the supply. Again it is only the local authority who can make the decision as to which parameters are to be included in the monitoring. More detail on how to make these decisions is given in Section 2.3.3.12, in the Guidance document.

Historical results of samples taken by a contractor will inform assessments of risk and the choice of parameters to be included in monitoring and decisions about which parameters can be excluded. It is important therefore to ensure that arrangements with contractors clearly require them to provide this data to the local authority.

### **Risk Assessments**

Local authorities can agree for contractors to carry out risk assessments on their behalf, subject to the competency requirement. The risk assessment methodology to be used by the contractor must be based on the example set out in the technical manual published on [www.privatewatersupplies.gov.uk](http://www.privatewatersupplies.gov.uk). The overall risk assessment score will be required in the annual local authority data submission to the Drinking Water Inspectorate. (Full details of this submission will be sent to local authorities in an Information Letter). There may be additional risks which need to be assessed and this should be considered on a case by case basis. When complete, the contractor must provide the risk assessment to the local authority. It is the duty of the local authority to then review the risk assessment and be satisfied that all the relevant risks are identified and appropriate control measures in place.

At MoD and other sensitive sites, the information required for risk assessments will be split into “non-classified” and “classified” information. Most water supply risk assessments can be adequately risk assessed using non classified information and without compromising security. Where “classified” information is pertinent to the risk-assessment , then the local authority should enter into a local agreement about what information it is reasonable to share without compromising either security or drinking water safety.

### **Failure to meet a drinking water standard and serving notices**

When a contractor’s sample results show that one or more drinking water standards (set out in Part 1 Schedule 1 of the regulations) has been breached or the water supply does not comply with Regulation 4 then local authority must decide if the supply is a potential danger to human health. Only the local authority can make this decision, not a contractor or other third party. This is because when it is determined that a supply is a potential danger to human health the local authority is under a duty to

(must) serve a Regulation 18 Notice. The Owner or Manager of the supply and any businesses or residents of any domestic dwelling using the supply must be informed of such a notice. Accordingly it is sensible to agree communications arrangements with contractors in advance and prior to any water quality incident arising. These arrangements can then be stated as a condition of any notice if the situation arises. For further advice see Guidance on Regulation 18 Notices.

The need for a notice to be issued may arise out of the conclusions of a risk assessment, not just from sampling results. In most instances, a regulation 18 notice will need to specify the relevant necessary remedial works or require an investigation to be carried out with a report being submitted to the local authority, stating what needs to be done to bring the supply into compliance. Investigations will also be needed whenever there is a suspicion that a supply is unwholesome or that an indicator parameter does not comply with the concentrations or values in Part 2 of Schedule 1. These investigations may be carried out by a contractor who is deemed competent by the local authority in advance. The investigation results must be sent directly to the local authority who must approve the suggested remedial measures and decide whether they satisfactorily address all the risks to the supply.

If a local authority decides from an investigation that a supply is unwholesome but not a potential danger to human health, then it can serve a Section 80 notice under the Water Industry Act 1991.

When remedial works specified in a Regulation 18 notice are complete then the local authority, not any contractor or third party, must revoke the notices and lift any restrictions. If you have any further queries regard this letter I can be contacted on the above e-mail and telephone number.

Copies of this letter are being sent to Pamela Taylor, Chief Executive, Water UK; Mike Walker, Water Supply and Regulation Division, Department for Environment, Food and Rural Affairs; Olwen Minney, Water Management Team, Welsh Assembly Government; Colin McLaren, Drinking Water Quality Regulator for Scotland; Margaret Herron, Drinking Water Inspectorate for Northern Ireland; Tony Smith and Chairs of the Regional Consumer Council for Water; Noel Wheatley, Ofwat; Tony Warn, Environment Agency; Nigel Harrison, Food Standards Agency; and Frances Pollitt at the Health Protection Agency.

This letter is being sent electronically to Day to Day contacts of the Water Undertakers and Licensed Water Suppliers for information. Please acknowledge receipt by email to [dwi.enquiries@defra.gsi.gov.uk](mailto:dwi.enquiries@defra.gsi.gov.uk). Hard copies are not being sent but the letter may be freely copied. Any enquiries about the letter should be addressed directly to [teresa.isaacs@defra.gsi.gov.uk](mailto:teresa.isaacs@defra.gsi.gov.uk)

Yours sincerely



Teresa Isaacs  
Inspector