

# Information note on Regulation 9



## Background

**This note specifically covers regulation 9 supplies (Large supplies and supplies used as part of a commercial or public activity).** We have included for completeness, a diagram on page 3, illustrating how regulation 9 differs from regulation 10.

## Regulation 9 applies to all private water supplies which supply:

- a) An average daily volume of water of 10m<sup>3</sup> or more for domestic purposes (NB where volume cannot be ascertained this equates approximately with 50 persons or more); or
- b) Water as part of a public or commercial activity.

## Public activity

Supplies that form part of a public activity are those serving any premises where the water is made available to the public for human consumption for example public buildings, garden parties. An illustrative list of such premises and some exceptions are given at Appendix 1.

## Commercial activity

Supplies where the water is being used as part of a commercial activity include the following:

### a) Food production

This includes all premises where the water is used in any food production undertaking for the manufacture, processing, preservation or marketing of products or substances intended for human consumption unless the competent authority (in this case the FSA) are satisfied that the quality of water cannot affect the wholesomeness of the foodstuff in its finished form<sup>1</sup>.

If water from a private water supply is used in food production for anything other than **primary** food production (the growing of, harvesting or extraction of raw materials for other industries, including, milking and farmed animal production prior to slaughter) then it **must** satisfy the Regulations. Supplies serving milking parlours where the water is used only for washing down purposes do not constitute a regulation 9 supply. This is covered by food law, for which the regulating body is the

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<sup>1</sup> FSA guidance confirms that potable water must be used on the final washing and cleaning of fresh fruit and vegetables that may be eaten raw, but clean water may be used for initial washing of crops. (defined in FSA guidance – see guidance for regulation 3).

Clean water may also be used in a dairy for washing animals, in cooling systems, and for cleaning and washing down equipment if it does not affect the wholesomeness of the foodstuff in its finished form.

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Food Standards Agency. *For further details see information note for regulation 3 (scope).* In some cases, water may be transported from its source to one or more locations (depots, factories etc.) via bottles, containers or tankers in different local authority areas, where the water is used as part of a commercial activity. In these cases, all local authorities concerned should work in a collaborative capacity to ensure that all necessary requirements of the Regulations are met.

**b) Businesses relying on a private supply of water where it is used for domestic purposes.** These include the following:

- Hotels, guest houses, restaurants, cafes and bed and breakfast (B&B) establishments, including single private dwellings where B&B is available;
- Holiday let accommodation;
- Caravan sites, camp sites and similar facilities, whether seasonal or open all year;
- Registered child minders.

**c) Tenanted properties**

A private water supply serving only a single dwelling, or where a single dwelling is one of multiple properties supplied from the same source, is considered to constitute part of a commercial activity when ALL of the following criteria apply:

1. The landlord/owner of a property is offering accommodation to paying tenants, where without a private water supply to provide a wholesome supply, as required by the enforcement guidance to the Housing Act 2004, the property could not be let.
2. The tenant(s) does not have full responsibility for the whole water supply (as agreed as part of the tenancy agreement, and clearly understood by both parties); these are excluded from the category as the tenant is exercising his right to water and can control its quality.
3. There is a commercial element to the let (i.e. it is not social housing or not-for-profit arrangement, or one where the domestic dwelling is not the primary commercial arrangement (for example a tied cottage) where the tenant has complete control of the supply and its maintenance).

Appendix 2 details some further illustrative examples of commercial activity and non-commercial activities.

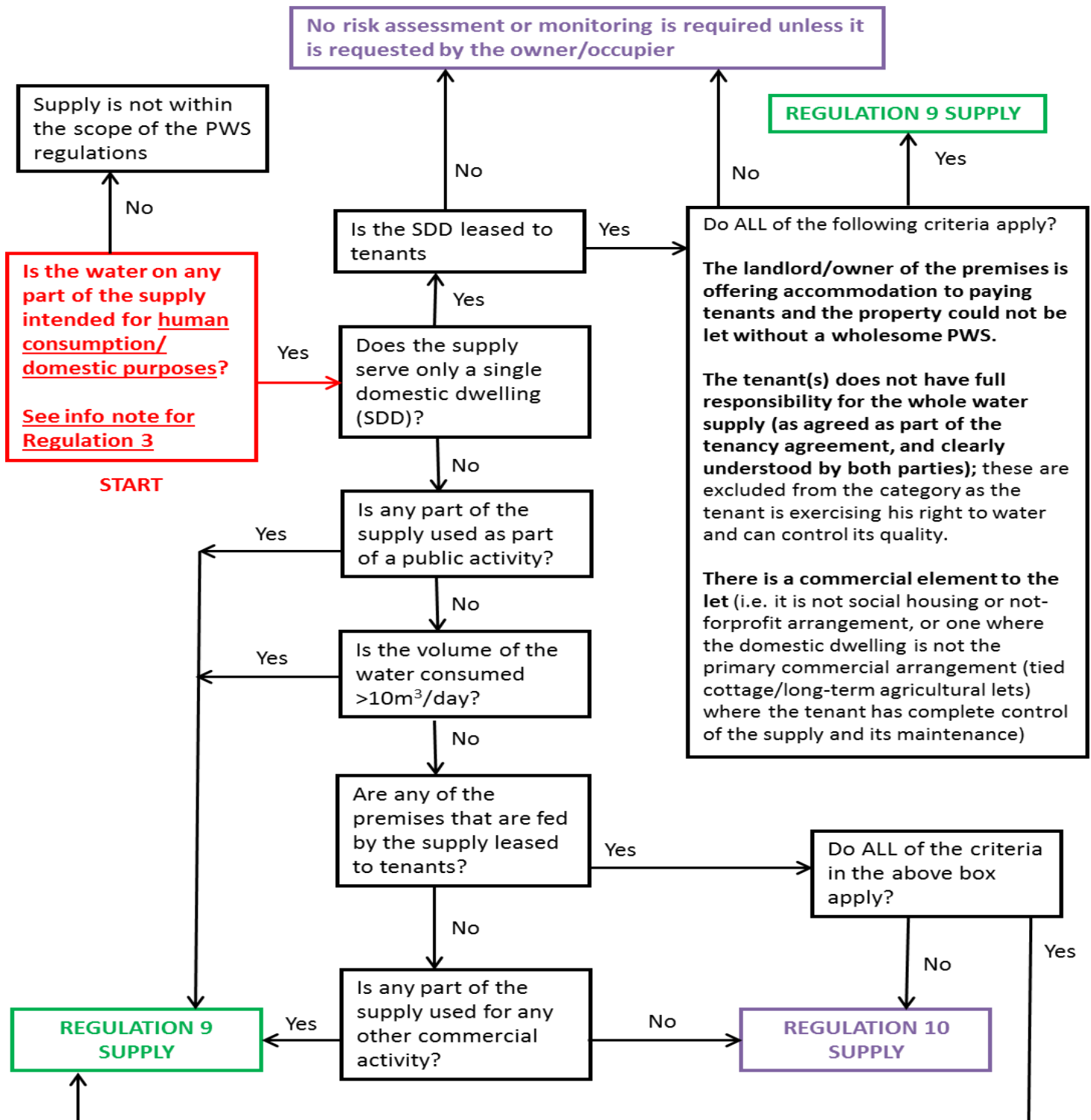
## Monitoring

Monitoring of regulation 9 supplies must be carried out in accordance with schedule 2 to the Regulations and to carry out any additional monitoring that the risk assessment (see regulation 6) shows to be necessary. Further guidance on monitoring frequencies is set out in the guidance note on regulation 7 (Monitoring).

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## Regulation 9 or 10 supply (England only)?



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## Appendix 1 list of buildings where public activity can occur.

Medical	Hospital
	GP surgery
	Dentist surgery
	Health centre
	Nursing homes
	Retirement /residential home for the elderly
Education	School/college
	Further education
	University
	Nursery schools
Hostelries	Cafes
	Pubs
	Restaurants
	Hotels and inns
	Guest houses
	Banquet/function
	Wine bar
	Campsite
Exhibition	Museum
	Art gallery
	Exhibition centre
	Conference centre

Sports	Sports ground/stadium
	Leisure centre
	Health clubs
	Tourist attractions
	Night clubs
	Theatre/concert halls
	Ice rink
	Cinema
	Historic building/stately homes
Miscellaneous	Hairdresser
	Beauty salon
	Prison/detention centre
	Community centre
	Job centre
	Housing centre

Other situations where water from a private water supply is supplied as part of public activity include those where drinking water is offered to the public at festivals, fairs and other temporary events. Private water supplies that supply water fountains, including those which form part of a heritage attraction (for example ancient springs and grottos), which are used for human consumption also fall within the scope of regulation 9. Pools and spas where the water is used exclusively for leisure or religious purposes are not (for example swimming pools). Regulation 9 does however apply where these establishments also provide water to the public for domestic purposes

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(for example, at drinking water fountains) or as part of a commercial activity (for example, for making beverages in an on-site café).

Appendix 2: The following example is where water *is* being supplied as part of a commercial activity:

- Any property where the landlord/owner retains responsibility for the water supply system (due to the location of the source and/or treatment systems for example) or where they chose to keep responsibility for maintenance and operation of key aspects of the supply (for example, to ensure correct operation of a treatment system).

The following examples are where water is not considered as being supplied as part of a commercial activity so would not be fall within scope of regulation 9:

- Properties or housing provided as part of a job, where the occupants of the property have special rights of occupation and maintenance that are akin to ownership, for example tied cottage, lifetime tenancy/occupation rights.
- Agricultural tenancies – where the provision of accommodation is not the primary purpose of the tenancy and it is generally long term with maintenance obligations akin to ownership.
- Foster homes – financial compensation is provided rather than payment (provision of a home rather than a service).
- Rented single dwellings where the occupier agrees (as part of the rental agreement) to take full responsibility to maintain and operate the water supply system and can evidence this (documentation/records).
- Social housing offered by councils or not-for-profit housing associations.
- Temporary events not on a private water supply (mains supply, tankers, and bowsers). In these cases, local authorities should ensure the organisers comply with BS-8551.

## **Is a private supply serving a business or commercial organisation a regulation 9 supply?**

A supply serving a business office, which is used for commercial purposes is not, in most cases, deemed a public building, and therefore NOT a regulation 9 supply unless the water being consumed is part of a commercial or public activity. If the business workers are consuming the private supply for any domestic purposes, without being charged a fee (for example, where beverages are made in a staff rest area or free canteen) the supply is subject to the requirements of regulation 10 of the Regulations (unless the volume consumed is  $>10\text{m}^3$  per day). Furthermore, the employer has a duty under health and safety law to provide employees and visitors with water for drinking and sanitation facilities.

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If the business is selling products where the water from a private water supply is part of an ingredient, for example beverages, which are being sold for a fee in a staff canteen, then the requirements of regulation 9 do apply.

If a business is making available water that is derived from a private water supply via a commercial vending machine for a fee, then regulation 9 applies.

However, where a premise, including a single dwelling served by a private water supply is used as a base, commercial child-minding facility or registered office from which a commercial activity is operated, regulation 9 **may** apply. Examples of these types of regulation 9 supplies include:

- Where the commercial activity operated from the premises uses the water in any food production undertaking for the manufacture, processing, preservation or marketing of products or substances intended for human consumption, and/or where the water is used for domestic purposes by members of the public. For example, a dwelling offering tea-room facility to the public.
- Where a premises is used for an activity by the owner occupier employing workers, and the employees of the business rely on the kitchen and bathroom facilities to consume water for domestic purposes AND the volume of water supplying the single dwelling is 10m<sup>3</sup> or more per day (if it is less than this volume it is a regulation 10 supply).
- Where a premises is being used for child minding as part of a registered business and the children rely on the kitchen and bathroom facilities to use water for domestic purposes.
- Where more than 10m<sup>3</sup>/day of water is consumed for domestic purposes from the premises by workers/employees (if it is less than this volume it is a regulation 10 supply). An example of this type of arrangement might be kennels or stables, where workers use the kitchen of the single dwelling as a rest room.