

Agenda Item	19
Report No	PLA 17/17

## HIGHLAND COUNCIL

**Committee:** Places Committee

**Date:** 15 June 2017

**Report Title:** Scottish Government Consultation: Draft Water Intended for Human Consumption (Private Water Supplies) (Scotland) Regulations 2017

**Report By:** Director of Community Services

### **1 Purpose/Executive Summary**

- 1.1 This report invites Members to approve the Council's response to the Scottish Government's consultation on "draft Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017".
- 1.2 The draft regulations will amend how Local Authorities (LA) in Scotland carry out their statutory duties in respect of private water supplies (PWS) and some of these changes include:
- changes to LA water monitoring programmes;
  - changes to how information is recorded on PWS register and reported;
  - amendment to the definition of a "large water supply";
  - amendment to the definition of a Relevant Person and person who exercises powers of management or control (e.g. PWS owner); and
  - the introduction of new enforcement powers.

### **2 Recommendations**

- 2.1 Members are invited to approve the Council's response to the Scottish Government's consultation on Draft Water Intended for Human Consumption (Private Water Supplies) (Scotland) Regulations 2017.

### **3 Background to consultation**

- 3.1 In Scotland, private water supplies are defined as those that are not provided by Scottish Water. Approximately 3% of the Scottish population uses a private water supply for drinking water. In Highland the population served by private supplies is estimated at 14%.
- 3.2 There are two types of private water supply (PWS), and the legislation relating to each is different. Larger PWS, or those with a commercial activity, are defined as Type A. Smaller PWS that only serve domestic properties are classified as Type B.
- 3.3 The quality of private water supplies can be variable and Environmental Health carry out monitoring, advisory and enforcement work to improve supplies. Grants are also available. Outbreaks of disease that have been attributed to private water supplies have occurred in Scotland including the Highlands. Outbreaks in Highland previously investigated by the Environmental Health team have included significant illness due to E.coli O157 infection in 2006.
- 3.4 The Scottish Government has issued this consultation as they propose to amend the Private Water Supplies (Scotland) Regulations 2006 and implement a new regulation called The Water Intended for Human Consumption (Private Supplies) (Scotland) Regulation 2017. This will apply to Type A supplies (large private water supplies) by 27 October 2017.
- 3.5 These changes are required to meet with Directive (EU) 2015/1787 on the quality of water intended for human consumption. The consultation closes on 28 July 2017. The proposed regulations seek to ensure that water supplied by large private water supplies meets the water quality standards and thereby protects public health.

### **4 Current position in Highland Council**

- 4.1 In Highland, there are currently 759 "Type A" supplies (to be known as large private water supplies) that are registered and subject to mandatory risk assessment, monitoring, and intervention by the Council. It is estimated these supplies serve 3000 properties.
- 4.2 In comparison there are 1651 "Type B" (smaller private water supplies) registered with the Council. Our duty is to offer advice, assistance and exercise discretionary powers in respect of sampling. It is estimated that these supplies serve 2300 properties.
- 4.3 In 2016-17, Environmental Health sampled 713 of our 759 Type A Private Water Supplies through our statutory monitoring programme.
- 4.4 In addition, risk assessments had been carried out for all of our Type A supplies. 643 Type A supplies were found to be satisfactory when tested for E.coli. Boil notices and follow up advisory and enforcement visits were undertaken where supplies did not meet the required standards.
- 4.5 In addition to the monitoring programme, officers also carried out risk assessments visits, provided advice, handled complaints, undertook enforcement, and approved 90 PWS improvement grants worth £74,000. Currently the Environmental Health team

has 4 designated PWS officers, supported by officers in our geographical teams.

## **5 Consultation Response**

5.1 The proposed response to the consultation is detailed in **Appendix 1**. Some of the key aspects of the draft regulations are as follows:

### 5.2 New enforcement powers

5.2.1 The regulations contain a number of enforcement provisions including remediation, enforcement and emergency notices and penalties for offences. For example, an emergency notice can be served on a person where urgent action is required to reduce or remove a risk to public health or the quality of water, and the Council may undertake the necessary work itself.

5.2.2 The proposed consolidation of enforcement powers under one regulation is favoured. The regulations will enable the Council to use a range of enforcement tools to secure compliance and ensure that water meets quality standards.

### 5.3 Revised definition of “Type A” private water supply

5.3.1 The draft regulations will expand the definition of a “large water supply” to include any water supply system that is supplied as part of a “commercial or public activity” or to any premises used for “commercial or public activity”. This definition may include private residential let premises that are connected to a PWS.

5.3.2 In Highland, there are currently 13,978 properties on the landlord register, of which 1000-2000 properties are rurally located and could potentially be connected to a PWS.

5.3.3 Environmental Health is supportive of the revised definition of a “large water supply” and its likely application to private residential lets (PSL).

### 5.4 Sampling

Additional sampling requirements are imposed by Directive (EU) 2015/1787. However the Scottish Government proposes to mitigate this by establishing supply zones. These zones will be made up of groups of PWS. This will have the benefit of simplifying monitoring programmes and reducing monitoring costs for individual supplies.

### 5.5 Private water supply register

Our Service will need to review our electronic PWS register and how we use our IT systems to record this data, so as to bring it in line with the draft regulation proposals. However within the consultation response, it has been suggested that the Scottish Government give consideration to providing an IT portal/database that can be utilised by LA’s to simplify and streamline this process.

## **6 Conclusion**

- 6.1 The consultation proposals will have implications for the Council as there may be an increase in the number of large water supplies (Type A). This will have resource implications for the Environmental Health team in managing any increase in the number of “large water supplies” on the register. Additional time will be required to identify “new” supplies”, risk assess and sample them and where necessary instigate enforcement.
- 6.2 The Scottish Government has not advised if additional funding will be available to LA's. However, there are provisions within the draft regulations for LA's to re-charge for PWS work activities on a cost recovery basis.
- 6.3 Overall, in terms of controlling risk from private water supplies, the proposed response is in favour of the introduction of separate regulations for large water supplies and implementation by 27 October 2017.

## **7 Implications**

- 7.1 Resource – As stated above, the new regulations may increase monitoring demands on the team. Cost recovery through charging has already been approved by the Council and its effectiveness will continue to be monitored by the service
- 7.2 Legal - There are no implications arising from these proposals.
- 7.3 Community (Equality, Poverty and Rural) - There are no implications arising from these proposal.
- 7.4 Climate Change / Carbon Clever - There are no implications arising from these proposals.
- 7.5 Risk - The consultation proposals will further control risk associated with item CMS1 in the corporate risk register 'Consequences of serious food and water borne disease outbreak'.
- 7.6 Gaelic - There are no implications arising from these proposals.

Designation: Head of Environmental and Amenity Services

Date: 1 June 2017

Author: Patricia Sheldon, Senior Environmental Health Officer, 01463 228720

Background Papers: <https://consult.scotland.gov.uk/drinking-water-quality-regulator-for-scotland/water-intended-for-human-consumption/>

**Title: Consultation in relation to the draft Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017****RESPONDENT INFORMATION FORM**

**Please Note** this form **must** be completed and returned with your response.  
Are you responding as an individual or an organisation?

- Individual  
 Organisation

Full name or organisation's name

The Highland Council

Phone number  
Address

01463 228720

The Highland Council, Community Services, 38 Harbour Road, Inverness

Postcode

IV1 1UF

Email

patricia.shedlon@highland.gov.uk

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name  
 Publish response only (without name)  
 Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes  No

**CONSULTATION QUESTIONS**

**Q1: Do you have any comments on the way in which we propose to transpose the Amending Directive?**

Yes  No

If “Yes” please enter your comments below.

**Q2: Do you have any comments on the amended definition of a relevant person?**

Yes  No

If “Yes” please enter your comments below.

The revised definition is welcomed as it adds clarity to who is deemed to be a relevant person under the existing regulations.  
However there is confusion over the definition of a water supplier (see question 7 ).

**Q3: Do you have any comments on the definition of a private water supply system?**

Yes  No

If “Yes” please enter your comments below.

**Q4: Do you have any comments on the concept of water supply zones in the context of private water supplies?**

Yes  No

If “Yes” please enter your comments below.

The Council favours the approach of monitoring by supply zones as the implications of monitoring each supply over 3 years will incur substantial costs to the PWS owner and to the LA.

The definitions of a supply zone in the draft regulations means a “geographically defined area within which water comes from one or more sources and water quality maybe considered as being approximately uniform”. Taking into the account the size of the Highlands, how many supply zones would be designated?

Clarification and guidance is sought as to how the DWQR/LA’s are to assess what is deemed “approximately uniform water quality” as contained in Reg 4 (2a)ii) of the draft regulation.

**Q5: Do you have any comments on the enforcement provisions of the new regulations?**

Yes  No

If “Yes” please enter your comments below.

The inclusion of enforcement powers under the umbrella of one statute is welcomed.

With reference to the Scottish Government consultation on “Energy Efficiency and Condition Standards in Private Rented Housing” which asks whether the repairing standard should be amended to include a duty on landlords of private rented properties with a private water supply, covering (a) risk assessment of the supply, and (b) annual water quality testing, our view is that the PWS regulations are best placed to provide enforcement provisions for the private rented sector.

**Q6: Do you have any comments on Schedule 1 – the information which must be registered?**

Yes  No

If “Yes” please enter your comments below.

There are notifiable changes to the information that will be required on the register. Our current registration database and the method by which certain PWS information is recorded will require review. We currently have 759 Type A supplies on the register.

Perhaps the Scottish Government could assist LA’s by providing a PWS register data portal/software database. This would simplify and streamline the register process and afford consistency across LA’s.

**Q7: Do you have any comments on the definition of a water supplier and the duties placed upon a water supplier?**

Yes  No

If “Yes” please enter your comments below.

In the context of private water supplies, the introduction of this definition adds confusion. Could a Relevant Person (RP) also be a water supplier (WS) and how do their duties differ? Further clarity on this is required please.

Can a schedule be included in the regulations that defines the role of the RP to the same degree as that drafted for a WS (in schedule 2)?

It is noted that the provisions contained in Schedule 2, para 2 places a legal obligation on a WS to display an information notice which would include details about the water source, quality and treatment. Yet the same requirements for a RP do not appear in the draft regulations.

The mandatory requirement on the WS (and in our view this should include a RP) to display an information notice and that non-compliance is an offence punishable by a fine on summary conviction is welcomed.

It is recommended that the Scottish Government provides a standardised notice format for WS/RP to use.

**Q8: Do you have any comments on the proposals regarding recovery of charges?**

Yes  No

If “Yes” please enter your comments below.

The proposed criteria for when LA’s can charge for expenses reasonable incurred and how these are apportioned, are similar to the existing regulations.

We support the removal of the cap on maximum charges and that Councils can recover “reasonable incurred expenditure”. Guidance should be provided to LAs on interpretation of “reasonable incurred expenditure”.

**Q9: It is proposed that smaller supplies will be the subject of separate new regulations in due course. Do you have any views on whether and, if so, which of the provisions of the current draft Regulations should not apply to smaller supplies?**

Yes  No

If “Yes” please enter your comments below.

There may be benefit in terms of public health in applying the requirements to smaller supplies but this must be fully justified. Careful consideration must be made of the potential burden that could be placed on LAs from this change to ensure any proposed regulations are proportionate to the risk.

A discretionary power to serve the range of enforcement notices should be explored however an informal and educational approach interlinked with grant funding has been a successful driver to improving smaller supplies.

If you were to transpose these regulations (i.e. mandatory risk assessment and monitoring) onto smaller supplies, this would have significant resource implications to the Council.

**Q10: With reference to the draft BRIA do you have any concerns about the impact of the new regulations on businesses, the third sector (voluntary) or any other relevant areas?**

Yes  No

If “Yes” please enter your comments below.

It is our understanding that within the definition of a “commercial or public activity” that residential lets may be considered a “large water supply”. However the draft regulations or the BRIA, or the Scottish Government consultation on “Energy efficiency and condition standards in private rented housing, do not detail this. It is the view of this Council that any changes to the definition of a “Type A” (large water supply) which is different to the PWS (Scotland) Regs 2006, should be transparent at this consultation stage.