



Drinking Water Quality Regulator for Scotland

Further guidance on the Implementation of the Water Quality (Scotland) Regulations 2010.

This further guidance has been produced with the assistance of an expert working group consisting of representatives from Health Protection Scotland (for the health protection interests of the NHS in Scotland), Argyll and Bute Council (for the interests of local authority environmental health departments), Scottish Water's Public Health Team, Scottish Government's Public Health Division and the Drinking Water Quality Regulator for Scotland.

The 2010 Regulations were made to further transpose the Drinking Water Directive into Scottish legislation. Their principle purpose was to introduce new sections into the Water (Scotland) Act 1980 to address the actions to be taken following water quality sample failures in premises in which the water is supplied to the public, where those failures are attributable to the domestic distribution system. These Regulations, together with their associated guidance, were not intended to supersede existing guidance relating to contamination incidents.

The Regulations came into force on 20 April 2010 and the Drinking Water Quality Regulator issued guidance on their implementation in February 2012. Since then, there have been some examples of drinking water quality incidents in which it is apparent that there is still a certain amount of confusion about how failures in premises should be managed. This further guidance is intended to clarify the issue.

There does not appear to be any question about how to deal with drinking water quality failures in a premise considered to be a public building, i.e. one in which members of the public have access to.

The question appears to be where a failure has occurred in a building which is not open to the public. In these cases, the Guidance for the 2010 Regulations states that it is expected that existing Scottish Water or local authority Environmental Health water quality failure investigation procedures would be followed. However, this may not have happened in practice. In a very small number of instances, some local authorities may have interpreted the Guidance such that where the failure has occurred in a building which is not open to the public, they have concluded that they have no powers to investigate and that they have no further role in the issue.

Water quality failures in buildings require adequate investigation and intervention, especially by agencies charged with health protection. The primary objective of such agencies (NHS Boards and local authority environmental health departments together) becoming involved in a situation where a contaminated supply has been identified is first to prevent further exposure to contaminated water by whatever means necessary. They should then ensure that there is an adequate independent investigation into the circumstances which led to the contamination, using whatever legislation is most appropriate. Whatever the situation, there is a basic duty to prevent exposure and investigate using the most appropriate legislation. It is essential that the health protection agencies are seen to be carrying out an independent investigation. Samples taken by property owners should not be relied on as part of the investigation.

This further Guidance is intended to outline the additional powers available to local authorities in such circumstances over and above those provided in the 2010 Regulations, which includes the Water (Scotland) Act 1980, Scottish Water's Byelaws (to prevent contamination of the public water supply and prevent waste, misuse, and undue consumption of water) and the Public Health etc. (Scotland) Act 2008. In addition, there are other powers available through the Health and Safety at Work etc. Act 1974 and Food Safety Act 1990 (and associated EC Regulations) which could also be appropriate in some instances. The Health and Safety Executive may have a role but that they would need to be contacted specifically on a case by case basis to clarify if they do or not.

Water (Scotland) 1980

Section 76 I of the Water (Scotland) Act 1980 provides local authorities with the power to enter premises to carry out inspections in relation to the supply of water and take away samples of the water. The occupier has to be given 24 hours' notice of entry unless the matter is considered to be an emergency. Premises are defined in section 109 as including land and also tents, vans, sheds and similar structures.

Scottish Water Byelaws 2004

Owners and occupiers of premises, and anyone who installs or maintains plumbing systems and water fittings, have a legal obligation to ensure that the systems and fittings meet the requirements of the Water Byelaws. In addition, architects, developers, plumbers and builders need to ensure the requirements are met for any future owners or occupiers. Failure to do so could lead to criminal prosecution. Scottish Water is responsible for the water main in the street and all the pipework up to, and including the stopcock at the boundary of the property. The owner/occupier will then normally have responsibility for any pipework from the stopcock into the property and all the indoor and external plumbing.

All plumbing fittings and materials used must meet the requirements of the Water Byelaws and therefore must have relevant UK or EU approval. It is illegal to use fittings which do not have the relevant approvals.

The Scottish Water Byelaws team is responsible for the enforcement of Water Byelaws and carry out inspections of premises. They also provide an advice service

to anyone seeking information or clarification on any Water Byelaw related issue. Although Scottish Water cannot provide a design service for plumbing systems, they will be happy to provide information on how to ensure compliance with the Water Byelaws.

Public Health etc. (Scotland) Act 2008

Section 21 of the Public Health etc. (Scotland) Act 2008 gives health boards and local authorities (competent persons) the power to enter any premises to carry out an investigation into a public health incident. A public health incident is defined in section 20 of the Act and includes where any premises are contaminated or there are reasonable grounds to suspect that the premises are contaminated. Contamination is defined in section 1(5) as being with or by a biological, chemical or radioactive substance. Premises is defined in section 123 to mean any land or building or any other place including a mobile home and a vehicle (both of which are also defined).

Should a public health investigation be considered necessary under section 21(4), section 23(1)(b)(ii) provides the power for health board and local authority competent persons to take samples of water in, on, or in the vicinity of the premises.

Where a local authority knows or suspects that premises are contaminated, section 73 of the Act provides local authorities with the power to serve a notice on the occupier or owner of premises to take steps to, for example, decontaminate the premises by a specified date. Under section 76, if the owner / occupier fails to take the steps by the due date, the local authority can enter and take the steps itself.

Section 79 provides local authorities with the power to enter any premises in an emergency without having served a Notice under section 73 and take steps to, for example, prevent or prevent the spread of a contamination.

Conclusions

The working group concluded that the principal aim is to respond to an incident relating to the drinking water supply, whether in a public building or not, for the protection of public health through the application of effective controls, investigation and improvement as appropriate. This requires a partnership approach and the use of suitable enforcement using the range of powers available to local authorities and other agencies, including those specified earlier in the guidance. The priority must be to investigate any failures where there is likely to be a significant risk to public health through the consumption of the drinking water.

We hope this now clarifies the issue for all concerned. The key to the successful management of all drinking water quality failures in any premises is the cooperation of all the professionals within the health boards, local authorities and Scottish Water. We would encourage all agencies to take this opportunity to review the arrangements in place to respond to drinking water failures within their organisations and partner agencies to ensure that they are resilient.

This further guidance does not over-ride what is already in place in terms of existing protocols and guidance for the management of a water related incident.

Scottish Government, Public Health Division

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4 April 2013