

Explanatory Memorandum to The Water Supply (Water Quality) Regulations 2016.

This Explanatory Memorandum has been prepared by the *Economy, Skills and Natural Resources department* and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of **The Water Supply (Water Quality) (Amendment) Regulations 2016**.

Carl Sargeant AM
Minister for Natural Resources
23 March 2016

1. Description

The Water Supply (Water Quality) (Amendment) Regulations 2016 will amend the Water Supply (Water Quality) Regulations 2010 to transpose the requirements of Council Directive 2013/51/Euratom laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption (“the Directive”).

The Regulations introduce new requirements for Water Undertakers operating wholly or mainly in Wales to monitor for radioactive substances in public water supplies as required by Article 6 and Annexes I, II and III of the Directive. These mainly focus on monitoring for radon, but will also cover Indicative Dose (ID) and tritium.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

These Regulations apply to the operations of water companies providing drinking water operating wholly or mainly in Wales. As such they apply in parts of England and are laid simultaneously in Parliament and the National Assembly for Wales as required by section 59(4) of the Government of Wales Act 2006 (“GoWA 2006”).

Paragraph 3 of this Memorandum explains that these Regulations are made partly in reliance on section 2(2) of the European Communities Act 1972. By virtue of section 59(3) of GoWA 2006, the Welsh Ministers are to determine whether an instrument made in exercise of the section 2(2) powers is to be subject to the negative or affirmative procedure.

As these Regulations are directly transposing the requirements of the Directive, the Welsh Ministers have determined that these Regulations are to be subject to the negative resolution procedure.

The transposition deadline for the Directive is 28 November 2015.

3. Legislative background

These Regulations are made by the Welsh Ministers in exercise of the powers conferred by—

- (i) section 2(2) of the European Communities Act 1972 (“the 1972 Act”), in relation to the Welsh Ministers’ designation in relation to the quality of water intended for domestic purpose or for use in a food production undertaking; and
- (ii) sections 67, 69, 77(3) & (4) and 213 of the Water Industry Act 1991 (“the 1991 Act”).

Section 2(2) of the 1972 Act provides that Ministers may be designated to make provision for the purpose of implementing EU obligations, or for the purpose of

dealing with matters arising out of or related to any such obligation. Section 59(1) of GoWA 2006 provides that section 2(2) may be used to designate the Welsh Ministers. The Welsh Ministers are designated for the purposes of section 2(2) of the 1972 Act in relation to the quality of water intended for domestic purposes or for use in food production undertaking. The National Assembly for Wales was originally designated by means of The European Communities (Designation)(No 7) Order 2002 and those functions are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraphs 28 and 30 of Schedule 11 to GoWA 2006.

The relevant functions of the Secretary of State under the 1991 Act were transferred to the National Assembly for Wales by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 as follows—

- Functions under section 67 were transferred for
 - a) the making of regulations concerning water supplied using the supply system of a water undertaker, in relation to the supply system of any water undertaker whose area is wholly or mainly in Wales; and
 - b) the making of regulations concerning water supplied other than using the supply system of a water undertaker, in relation to Wales, by article 2 of, and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999;
- Functions under sections 69 and 77 were transferred in full;
- Functions under section 213 were transferred to the Assembly to the same extent as the powers, duties and other provisions to which that section applies were exercisable by the Assembly.

The functions conferred on the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraphs 28 and 30 of Schedule 11 to, GoWA 2006.

As outlined above, the Regulations are subject to the negative procedure, and are required to be laid before both the National Assembly for Wales and Parliament by virtue of section 59(4) of GoWA 2006 paragraph 2(2) of Schedule 2 of the 1972 Act, due to the fact the Regulations will relate to cross border bodies.

4. Purpose & intended effect of the legislation

This instrument applies to England and Wales.

The objective of the Regulations is to include new EU requirement for monitoring of radioactivity in water.

The Council of the European Union adopted the Directive under the Euratom treaty on 22 October 2013.

The Directive sets out parametric values, and frequencies and performance characteristics for analytical methods for monitoring radioactive substances in water intended for human consumption. This includes water as defined in the

scope of the Drinking Water Directive 98/83/EC for drinking, cooking, food preparation or other domestic purposes supplied from a distribution network, tanker or in bottles or containers. It also includes all water used in any food production undertaking for the manufacture, processing, preservation or marketing of products or substances intended for human consumption.

Implementation of the Directive by administrative or non-regulatory means, such as guidance or a code of practice, would not transpose the Directive into national law and would not achieve the controls and measures needed to monitor and enforce the Directive's standards and other wholesomeness requirements.

The Water Supply (Water Quality) (Amendment) Regulations 2016 clarify the regulatory requirements in respect of the aspects relating to public water supplies provided by water companies operating wholly or mainly in Wales. As such, they apply to Wales and those parts of England supplied by such companies.

5. Consultation

The Regulations are a direct transposition of an EU Directive. The Directive requirements are very specific and do not give the Welsh Government discretion on how they can amend the regulations in terms of what the stakeholders must do. Due to these limitations a public consultation exercise has not been carried out, stakeholders have however been appropriately informed in advance of the changes to the Regulations in line with the requirements of article 9 of EC Regulation No. 178/2002.

6. Regulatory Impact Assessment (RIA)

Regulatory Impact Assessment (RIA) has not been prepared as the amendments have no impact on the costs of businesses.

Following the advice and guidance letter dated 12 October 2015 from the Drinking Water Inspectorate. Public water supplies are generally observed to have the lowest concentrations of radon, especially those derived from surface sources which make up the majority of Wales' publically supplied water (-in contrast to Private Water supplies which tend to be groundwater sourced). As a result the DWI have advised that no monitoring of surface water supplies is required, and in areas of moderate to high risk monitoring can be carried out at supply points which is in line with public suppliers current procedures.