

Subject: Private Water Supplies Regulations 2009 - Policy and Fees **Status:** For Publication

Report to: Policy Overview and Scrutiny Cabinet **Date:** 18th January 2011
17th February 2011

Report of: Head of Health, Housing and Regeneration

Portfolio Holder: Regeneration

Key Decision: Yes

Forward Plan General Exception Special Urgency

1. PURPOSE OF REPORT

- 1.1 To consider the duties on the Local Authority in relation to private drinking water supplies regarding the legislation and to propose a defined policy and fees for implementing the legislation.

2. CORPORATE PRIORITIES

- 2.1 The matters discussed in this report impact directly on the following corporate priorities:-
- Keeping our Borough clean, green and safe
 - Encouraging healthy and respectful communities
 - Providing value for money services

3. RISK ASSESSMENT IMPLICATIONS

- 3.1 All the issues raised and the recommendation(s) in this report involve risk considerations as set out below:-
- The Council has a duty under the Water Industry Act 1991 to keep informed about the wholesomeness and sufficiency of water supplies provided to premises in their area, including every private supply in any such premises.
 - The Council also has a duty to notify any water undertaker of anything appearing to suggest that any supply is likely to be unwholesome, that it may cause a danger to health and if they are not satisfied that all such remedial action as is appropriate will be taken by the undertaker, to inform the Secretary of State.

4. BACKGROUND AND OPTIONS

- 4.1 The Water Industry Act 1991 (the Act) places a responsibility on local authorities for checking the safety and sufficiency of all water supplies in their area. For public water supplies, this means that local authorities must have effective working arrangements in place with all water companies who operate in their area.
- 4.2 The Drinking Water Inspectorate (DWI) is the drinking water quality regulator for England and Wales. Although part of DEFRA it acts independently of the government. The Act defines the powers and duties under which the DWI operates and also the duties of water companies and licensees. Under the Act the authority for regulating the quality of public supplies is designated to the Secretary for State for Environment, Food and Rural Affairs.
- 4.3 A public supply is one provided for the purposes of drinking, washing, cooking or food production by a statutorily appointed water company. In Rossendale this is United Utilities. The wholesomeness is defined by reference to drinking water quality standards and other requirements set out in the Water Supply (Water Quality) Regulations 2001 as amended. Many of the standards come from the 1998 European Drinking Water Directive which came into force fully on 25th December 2003. The Directive focuses on those parameters of importance to human health, but it also includes others that relate to the control of water treatment processes and the aesthetic quality of drinking water.
- 4.4 The Act defines water supplies that are not provided by statutorily appointed water companies as private water supplies (these could be supplied from boreholes, wells, springs etc.). A relatively small proportion of the population relies on these private supplies and most of these tend to be in the more rural parts of an area. However, many more people may have some contact with private water supplies as they can be used in the manufacture of certain foods and beverages and serve premises such as bed and breakfast businesses, camp sites and leisure facilities. The quality of private water supplies is the responsibility of the Local Authorities and the implementation of this is through the Private Water Supply Regulations 2009. The drinking water standards which are applied to private supplies are the same as those for public supplies, but for the smallest supplies there is more emphasis on risk assessment and risk mitigation than sampling.
- 4.5 The new private water supply regulations also apply to all water, including “mains water” that is supplied from a distribution network within one premises e.g. a caravan site. Excluded from the scope are:
- Water controlled by the Natural Mineral Water, Spring Water and Bottled Drinking Water (England) Regulations 2007;
 - Water that is an authorised medicinal product; and
 - Water that is used solely for washing a crop after harvesting.
- 4.6 The Environmental Health Section currently deals with around 480 private water supplies, serving households and businesses that we are aware of (the actual figure may be higher). These can range from small supplies serving one domestic property to larger volume supplies serving, a group of properties or a

whole village. A number of businesses also use private water supplies for services such as drinking water for visitors and food production.

- 4.7 The Private Water Supplies Regulations 2009 (the Regulations) were brought into force on 1st January 2010 and replaced the Private Water Supplies Regulations 1991. Both sets of Regulations were made under the Water Industry Act 1991 and were intended to ensure that the quality of private water supplies was comparable to the quality of the public water supply enjoyed by the majority of the population.
- 4.8 The Private Water Supplies Regulations 1991 introduced a formal setting for monitoring and controlling the quality of private water supplies in England and Wales for the first time. Prior, to these regulations sampling had largely taken place on an ad hoc basis, with those householders who requested a visit having their water sampled and those who made no such request being left alone. The 1991 Regulations required local authorities to formally classify the supplies within their areas and to sample them on a programme basis. The only exception to this requirement was single dwellings served by their own supplies (known as category 1F properties) who were not required to be included in the programme and over which local authorities had no control and not serving a commercial interest.
- 4.9 Whilst the 1991 Regulations were successful in requiring local authorities to obtain better intelligence about private water supplies in their areas and formulating sampling programmes, they were less successful in bringing about improvements to those supplies. In part this was due to the cumbersome and expensive enforcement powers contained in the Regulations, which directed appeals against local authority enforcement actions directly to the Secretary of State rather than to the Courts. This mechanism was considered unworkable by the vast majority of local authorities and meant that whilst improvements were made to private water supplies under the control of the well-intentioned or concerned owner, supplies serving those with less ability to make easy improvements often remained subject to intermittent contamination.
- 4.10 Although the 2009 Regulations have been introduced as a result of the European Union revised Directive 98/83/EC in order to take account of medical, scientific and technological advances since the original Directive, the Secretary of State has used the opportunity to address the shortcomings in the 1991 Regulations. The 2009 Regulations has made changes to the ways in which local authorities are expected to address the issue of water quality, namely the requirement to undertake risk assessments **of all** private water supplies other than supplies to a single dwelling not used as public buildings or commercial purposes. The regulations introduce a requirement to take formal action to ensure that all private supplies meet the standards prescribed by the Regulations. However, responsibility for maintenance of these supplies and their water quality rests with the users and/or owners of the supply.
- 4.11 The risk assessments of all prescribed private water supplies are required to be undertaken within the next 4 years and are necessary to establish whether there is a significant risk of supplying water that would constitute a danger to human health.

- 4.12 Where there is a significant risk then action will be taken and this will take the form of an investigation to determine the cause of the failure to meet the standards, informal negotiation to encourage the responsible person to remedy the failure and if this informal approach is not successful, the service of a notice under section 80 of the Water Industry Act 1991. If the cause of the failure is due solely to the condition of pipework within a private dwelling then the emphasis changes slightly and in such a case the Council may serve a notice under section 80 of the 1991 Act.
- 4.13 If after consulting with the local Health Protection Unit, officers believe that a private water supply is a potential risk to human health then the Council must take action to ensure that people likely to consume the water are warned and given advice to allow them to minimise the danger. Furthermore, the Local Authority must serve a notice under regulation 18 of the 2009 Regulations (rather than section 80 of the 1991 Act) prohibiting or restricting the use of the supply and must specify other measures that are needed to protect human health, such as improvements to the supply. The Council must also inform consumers of the notice and provide them with any advice necessary as a temporary measure whilst improvements are being made, such as advice on boiling the water or restricting its use for drinking and cooking.
- 4.14 Any person responsible for a private water supply may apply to the local authority for an authorisation to continue supplying water to a lower standard than that required by the Regulations on a temporary basis, whilst remedial action is taken. However, an authorisation may only be granted if the supply cannot be maintained at the proper standard by any other reasonable means and the authorisation does not cause a potential danger to human health. Authorisations are not available for microbiological parameters for this reason.
- 4.15 In order to operate the powers contained in the Regulations officers must be authorised by their local authority. Powers to enter premises and to inspect, measure, test and sample private water supplies are contained in section 84(3) of the 1991 Act. These powers remain as they were under the 1991 Regulations.
- 4.16 The Regulations also set out a number of fees that may be made for the operation of the private water supply service. Schedule 5 of the Regulations specifies the maximum fee that may be charged for each element of the service and officers have estimated the reasonable amounts that should be charged in the case of Rossendale Borough Council below.
- 4.17 No fee is payable where a sample is taken and analysed solely to confirm or clarify the results of the analysis of a previous sample.
- 4.18 The new charges are an increase on those previously charged and reflect the increased work that is required by the legislation and the increase due to inflation since 2000. Currently no charge is made for sampling visits across Rossendale.

- 4.19 There needs to be a balance between minimising the cost of provision of the service and the demand on resources for the remainder of the environmental health services. In particular, additional resources may be required to undertake risk assessments, collecting and submitting samples according to the new requirements, carrying out investigations and granting authorisations. The whole cost of analysis of samples is currently recharged to the supply owner and that is expected to continue.
- 4.20 In future fees will be reviewed in the annual fees and charges report brought to this Committee.

Service	Recommended Fee	Current Fee
Risk assessment (each assessment)	£30 per hour or any part there of plus £10 per invoiced household	No Charge
Sampling (each visit)	£30 per hour or any part there of up to a maximum of £100	No Charge
Investigation (each investigation)	£30 per hour or any part there of up to a maximum of £100	No Charge
Granting an Authorisation (each authorisation)	£30 per hour or any part there of up to a maximum of £100	No Charge
Analysing a sample under regulation 10	Laboratory charge or to max fee	Laboratory charge
Analysing a check monitoring sample	Laboratory charge or to max fee	Laboratory charge
Analysing an audit monitoring sample	Laboratory charge or to max fee	Laboratory charge

Appendix 1 provides a breakdown of the sampling and suite of contaminants tested for as part of the stated fee.

- 4.21 Over, the last twelve months the team has been gathering data and intelligence regarding supplies to provide a detailed return to DEFRA for the 30th June 2010. Further, monitoring information is needed on 1st January in each subsequent year providing requisite information needed by DEFRA.
- 4.22 There is currently no income budget for private water supplies as all expenditure on analysis is recharged to the supply owner. However, extra income will be needed to be able to provide the services as required by the Regulations and the DEFRA Returns. Much of the income earned will be used to fund increased expenditure to procure professional support to undertake the necessary risk assessments as well as approving authorisations.
- 4.23 The Council's current intelligence suggests that from the 480 private supplies the work required to comply with the Regulations includes the following:-

- 188 supplies are provided to more than one property. These need to be risk assessed within the next 4 years.
- 18 properties will need to be sampled, being classified as large supplies (over 10m³ or more of water per day) or where water is used for a commercial activity or to public premises.
- 2 sites will need to be risk assessed because they supply “mains water” through a private distribution system.
- 188 supplies, other than to single properties, need to be sampled at least every 5 years through “check monitoring” or “audit monitoring” at a frequency dependent on the volume of water supplied and risk assessment as prescribed in the regulations. Considerable work is required to determine the parameters for which sampling is required. The expected guidance will provide more information to assist in this decision.
- An unknown number of premises may request an authorisation (where any reason for unwholesomeness is due to specific parameters, consultation has been undertaken, there is no danger to human health and the supply of water cannot be maintained by any other reasonable means).
- An unknown number of investigations will be required as a consequence of information being obtained that a supply is unwholesome or that an indicator parameter does not comply with requirements.

4.24 It should be noted that the number of private water supplies is based on historical records. The sampling regime under the old regulations only required a sample which was representative of a source i.e. from one property, through a detailed sampling regime and risk assessments the number of private water supplies across Rossendale may increase.

4.25 Where access to property and land is refused during the pursuit of these Regulations the Council will take direct action in order to meet the statutory requirements.

4.26 Officers are currently examining the possibility of linking to other data sources to improve the Rossendale Borough Council information.

COMMENTS FROM STATUTORY OFFICERS:

5. DEPUTY SECTION 151 OFFICER

5.1 The hourly rates suggested at 4.20 above have been calculated to simply recover costs based upon the anticipated officer involvement and the pay and overheads of current personnel. If volumes rise above those which can be handled by current staffing levels, then outside professional services will be procured, at an extra cost to the Council. At present the hourly cost for that service is not known.

5.2 Each household charged will also incur a basic administration fee of £10 to cover the processing of costs and the collection of income.

5.3 At this point it is impractical to try to estimate an annual level of costs or fee income. Further information will be provided through the regular financial monitoring reports to Cabinet once the regulations have been fully implemented

6. MONITORING OFFICER

- 6.1 The 2009 regulations make provision for local authorities to make a charge for certain activities required by the regulations. The charge may only cover the reasonable cost of providing the service and is subject to maximum limits. The fee is payable by the owner or users of the water supply.

7. HEAD OF PEOPLE AND POLICY (ON BEHALF OF THE HEAD OF PAID SERVICE)

- 7.1 There are no HR implications.

8. CONCLUSION

- 8.1 The Regulations place a greater onus on Local Authorities to assess and monitor the quality of private water supplies in their areas. However, this will have an impact on the resources within this section and external support will be required to facilitate elements of this work.
- 8.2 The fees proposed are in accordance with the Regulations and are reflective of the additional work that will be required to assess and enforce the standards.

9. RECOMMENDATION(S)

- 9.1 That members consider the proposed changes for the implementation of the new Private Water Supplies Regulations 2009 and note the new duties and responsibilities associated with these regulations.
- 9.2 That members agree to the adoption of the fees proposed.
- 9.3 All future minor amendments to this policy to be delegated to the Head of Health, Housing and Regeneration in consultation with the Portfolio Holder.

10. CONSULTATION CARRIED OUT

- 10.1 Direct consultation with:-
- Internal Council Departments
 - Peer Local Authorities

11. COMMUNITY IMPACT ASSESSMENT

- Is a Community Impact Assessment required Yes
- Is a Community Impact Assessment attached Yes

12. BIODIVERSITY IMPACT ASSESSMENT

Is a Biodiversity Impact Assessment required No

Is a Biodiversity Impact Assessment attached No

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Background Papers	
Document	Place of Inspection
Reports and background information	Room 209