

## **Environment and Forestry Directorate’s consultation in relation to the draft Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017**

### **Consultation Response by Consumer Futures Unit, Citizens Advice Scotland**

#### **Introduction**

The Consumer Futures Unit (the CFU) sits within Citizens Advice Scotland (CAS). The CFU is the Scottish consumer representative body in the regulated markets of energy, post and water. It uses compelling evidence, expert analysis and research to put the interests of domestic and non-domestic consumers in Scotland at the heart of policy-making and market behaviour. It develops practical policy solutions that lead to consumers being informed, engaged and protected.

Our aim within the water industry is to challenge and shape policy to ensure it reflects the needs of consumers. We are members of the Scottish Government’s Rural Provision Working Group and also the Sustainable Rural Communities Steering Group (CREW), both of which aim to identify suitable strategy and policy to improve private water and sewerage provision. We warmly welcome the opportunity to respond to the Drinking Water Quality Regulator’s consultation on the draft Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017.

#### **General Comments**

In principle, the Consumer Futures Unit welcomes measures that result in safer private water supplies for consumers and our response to the consultation reflects this position. In addition, we have set out associated factors with changes to legislation including the potential for changes to existing regulations for private water supplies to impact upon users, and where possible, how this could be addressed.

Additionally, our responses to the consultation reflect consumer-related policy considerations that we believe should be taken into account as a result of the proposed legislative changes. Some of these may be more appropriate taken within the context of any next steps following parliamentary approval of new legislation.

Lastly, the Consumer Futures Unit welcomes the overview and summary that are provided within the consultation document. They clearly and simply set out the proposed changes within a fairly complex legal framework.

**Question 1:****Do you have any comments on the way in which we propose to transpose the Amending Directive?**

- 1.1. Paragraph 3.1 states that the proposed regulations were developed following consultation with local authority representatives and environmental health officers responsible for private water supplies. The new regulations may necessitate a greater degree of involvement and responsibility on behalf of Type A users, and accordingly, the Consumer Futures Unit would welcome further information regarding consultation with Type A communities that was or will be used to inform the new legislative requirements.

**Question 2:****Do you have any comments on the amended definition of a relevant person?**

- 2.1 The definition of “relevant person” has been broadened within the new regulations with regards to powers of management and control (I i-iv). We welcome this change, as it offers a more comprehensive and inclusive definition of individuals that are directly or indirectly responsible for accessing or managing private water supplies. We acknowledge that the term “relevant person” will be used within the context of what has been set out within the new regulations.
- 2.2 We note that the definition used in the new regulations does not state who is (financially) responsible for maintaining or improving the water quality of a private supply. In certain circumstances where financial responsibility is not clear, there may be a risk that this could lead to a lack of coordination among responsible parties and ultimately poorer water quality. For example, this may apply to several owned or rented properties that use water from a private supply originating on a separately owned property. We would welcome further consideration of this point and how the new regulations might encourage greater collaboration between owners and users of private water supplies.
- 2.3 The 2006 Regulations stated that “A person aggrieved by a decision of a local authority to determine that person to be a relevant person may appeal to the sheriff against that determination, and the decision of the sheriff in that matter shall be final” (II, 5.(1)). The draft regulations do not mention such an option. We would welcome further clarity regarding due process in the case of a responsible person who may not have the capacity or the ability to perform their duties as set out within the new regulations, for example, someone suffering from ill health. In these instances, we believe it would be helpful to make available a temporary or interim position in terms of a responsible person until a more permanent solution can be identified.
- 2.4 Further, we note that the new regulations do not include a specific responsibility for local authorities to notify the relevant person of their status and responsibilities. The 2006 Regulations stated that “As soon as reasonably practicable after making a determination under paragraph (1), the local authority shall notify each relevant person in writing of its determination and the reasons for it” (II, 4. (2)). We believe that relevant persons are more likely to fulfil their responsibilities concerning Type A private water supplies, and be aware of their rights, if they are informed of their role by their local authority. Not only would this establish a clear process of accountability

and responsibility to adhere to legislative requirements, but it would also establish a greater degree of engagement between responsible parties and local public bodies.

**Question 3:**

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

- 3.1 The CFU welcomes the change in terminology from “private water supply”, “distribution network”, and “domestic distribution system” to “private water supply system” or “water supply system”, as we are of the view that it provides a more explicit scope and source of the supply and associated networks.

**Question 4:**

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

- 4.1 The CFU notes that the new definition omits the phrase “for human consumption”. The title of the new regulation clearly states that water supply zones apply to water intended for human consumption; therefore we are content with this change.

**Question 5:**

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

- 5.1 Generally, we believe that the new regulations provide greater protection to those consuming private water from Type A supplies, and greater accountability for those responsible for supplying private drinking water.
- 5.2 More specifically, we welcome the requirement for those who own premises provided by a private water supply to display an information notice on water quality for those using the water. Increasing awareness for consumers of the source of the water and its quality will lead to informed choices regarding water consumption.
- 5.3 We welcome the annual publication of information on water quality by local authorities as we believe it will provide policy and decision makers with essential insight into common issues, trends, and concerns across local authorities with regards to the quality of drinking water and its management at source. Currently, concerns regarding private water supply management and quality are a largely hidden issue.
- 5.4 In addition, the Consumer Futures Unit would welcome further consideration to be given to producing an annual summary report, aimed at communities and / or stakeholders, setting out high level issues related to private water supplies across Scottish local authorities, and possible solutions. This could be achieved by anonymising sensitive community information, and made available to all private water communities, public bodies, etc. to support policy development.

**Question 6:**

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

- 6.1 In terms of private water supplies and their users, we believe that the measures set out within Schedule 1 will create a more accurate and complete record that will

usefully inform ongoing policy development in relation to specific characteristics/ issues related to private water management and quality.

**Question 7:**

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

- 7.1 Whilst we welcome stronger measures to enforce the improvement of private drinking water quality that fails to comply with minimum regulated standards, we would welcome further engagement with the Drinking Water Quality Regulator to review issues associated with the cost to serve. Measures to bring a failing water supply to a compliant standard may be beyond the financial means for the responsible party(ies), leading to a failure to comply with minimum standards, and additional intervention may be required to address this issue.
- 7.2 We welcome the introduction of more timely notification for those using private water. This ensures that in the event of an issue, consumers are able to take any remedial action they believe is necessary based on informed choices. This is particularly relevant to visitors to an area that may not be aware of the potential consequences of consuming non-compliant water.

**Question 8:**

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

- 8.1 Clear and transparent charges levied on consumers by local authorities are essential where there is no standard fee and where this may vary from local authority to local authority. Consumers need to understand charges and any billing or notification issued to recover charges should be clearly itemised to list the costs associated with the services that have been provided by the local authority.
- 8.2 Additionally, we note that the new regulations do not state a maximum charge that can be levied by local authorities within the principle of full cost recovery. We are concerned that this may expose some consumers / communities to extreme variations in charges depending on their location and the cost to the local authority of providing a service. We would welcome greater clarity from the Drinking Water Quality Regulator on what measures are in place to protect consumers from unusually high charges associated with local authority services. Linked to point 7.1, this could aggravate issues related to affordability.
- 8.3 Additionally, information on specific service charges, and the basis on which they are levied by local authorities, should be accessible to allow consumers to anticipate the financial burden of adequately managing their private water supply.
- 8.4 Furthermore, we believe that charges should be reviewed annually across all local authority areas to highlight and examine any extreme charging variations.
- 8.5 The CFU further advises that the regulations should clearly set out all circumstances under which charges will occur for testing. The phrasing in the new regulations states that “an enforcing authority may charge a person for expenses” (Schedule 10, 1.(1)). However, we believe that this needs to go further and provide information on who will be charged (e.g. ‘responsible person’) and on what grounds this decision will be taken.

**Question 9:**

**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?**

- 9.1 The Consumer Futures Unit supports measures to improve water quality for smaller supplies and welcomes the principle of more regular testing of smaller supplies in order to improve water safety for consumption.
- 9.2 However, whilst we support the principle of more closely aligning smaller private water supplies to measures that will improve drinking water quality, consideration must be given to the nature of some smaller supplies in terms of limited capacity. Additional support may be required by smaller supply communities or owners to achieve regulatory requirements.
- 9.3 Further to 9.2, we believe that there are a number of core issues that must be taken into consideration when setting out the new regulations for smaller water supplies:
- They currently bear the full cost of any action required to improve water quality, and are not covered by the principle of cross subsidisation by a wider paying customer base, which applies to customers of public water supplies.
  - They may not have sufficient or available resources, or adequate technical capacity, to adequately address remedial actions required.
  - Some supplies are very small which means that the cost of compulsory testing (if introduced) or indeed remedying, could place a disproportionate financial burden on those responsible for paying. Issues associated with lack of financial or technical capacity to implement the necessary measures to improve water quality, may result in non-compliance.
- 9.4 The CFU welcomes further partnership working with the Drinking Water Quality Regulator and the Rural Provision Working Group to identify a suitable framework of support to address the above issues, prior to the introduction of the new regulations.

**Question 10:**

**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?**

- 10.1 The Consumer Futures Unit welcomes further planned consultation with business representatives and other organisations working on rural issues. In addition to the list provided within the Business and Regulatory Impact Assessment, we would suggest the following bodies and organisations:
- Rural Housing Scotland
  - Scottish Rural Network
  - Scottish Rural Action
  - Highlands & Islands Enterprise.