

Information note on Regulation 16



Background

Procedure following investigation (remedial action)

Regulation 16 requires a local authority to carry out an investigation where it suspects, or has evidence that a supply is unwholesome by virtue of a breach of a standard, or when an indicator parameter exceeds the prescribed concentration or value specified in part 2 or part 3 of Schedule 1. The purpose of the investigation is to determine the cause of the supply being unwholesome and subsequently take the necessary action to remediate the cause.

An investigation would normally require an inspection of the supply and strategic sampling to locate the likely cause. For example, ingress risks in stored water tanks and chambers, or other hazards that may have developed or changed since the last risk assessment was undertaken.

If the local authority is satisfied from its investigations that the cause of the water being unwholesome or exceeding the indicator parameter concentration or value is due to the pipework (or fittings) within a domestic premises (where the water supply is used for drinking, food preparation, cooking or washing, and is not provided to the public or used in a commercial activity), the local authority must promptly inform the people concerned and offer them advice on measures necessary for the protection of human health and/or good hygiene practises.

In premises where water is provided to the public, the local authority must, in addition to this, require the appropriate relevant persons to ensure that the cause of the unwholesome water or indicator parameter exceedance is remediated.

If the cause of the water being unwholesome is not due to pipework deficiencies within the distribution system of a domestic premises and is not a failure of a standard, or an indicator parameter exceedance that does not constitute a potential danger to human health, the local authority must advise the relevant person(s) of the action required to mitigate the cause of the unwholesome water. The local authority must then give the relevant person(s) 28 days written notice from the time of the risk being identified to take remedial action, i.e. mitigate the risks completely by way of appropriate remedial action or have implemented a suitable plan of remediation with appropriate timescales to the satisfaction of the local authority.

If, after this time period, the risks have not been mitigated or a suitable plan has not been agreed, the local authority must serve a Notice in accordance with Section 80 of the Water Industry Act (Regulation 16(4)(b)) to ensure the improvements are made.

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Although Regulation 16(4)(b) gives local authorities the option of granting an authorisation, this option is no longer available to local authorities except in exceptional circumstances, as explained in the Information Note on Regulation 17.

If the cause of the water being unwholesome is a potential risk to human health, irrespective of whether it was due to the pipework within the domestic distribution system or not, the local authority must serve a Notice under Regulation 18 on the appropriate relevant persons requiring action to be taken.

In certain circumstances the local authority may choose to serve both a Section 80 Notice and a Regulation 18 notice. Examples of such circumstances include when a potential danger to human health is identified, but the local authority believes that the relevant person will not carry out the required remedial works. Serving a Section 80 Notice will allow the local authority to do the work in default (under Section 81 of the Water Industry Act). Another example where both notices might be served is where different actions are required for different reasons. For example, a Regulation 18 Notice can be served to specify certain actions necessary for the protection of human health and a Section 80 Notice can be used for other actions in relation to ensuring wholesomeness or sufficiency of a supply. Alternatively a risk assessment and/or monitoring may identify both a risk to health and other failures/potential failures. The local authority may wish to serve a Regulation 18 Notice to secure short-term restrictions to the supply and if necessary an investigation to be carried out. A Section 80 Notice may be served concurrently or shortly afterwards to require any remedial work identified by the investigation to be completed, or other actions to secure non-health related wholesomeness breaches.

In some supplies, a sample result may indicate a supply is unwholesome by virtue of a breach of the standard for nitrate. Where local authorities are satisfied that the advice from PHE regarding nitrate levels being a potential danger to human health applies (see the Inspectorate's guidance <http://www.dwi.gov.uk/stakeholders/guidance-and-codes-of-practice/pws-nitrates.pdf> for more information) then actions contained in that guidance note may be considered appropriate and no further notice needs to be served, provided nitrate concentrations do not exceed 100 mg/l as NO₃.

Regulation 16(6) of the Private Water Supplies England) (Amendment) Regulations 2017 also requires that where a parameter that is being monitored on a reduced frequency, or is otherwise varied under Schedule 2 of the Regulations, has breached a regulatory standard, the frequency of monitoring must immediately return to normal frequency as outlined in Tables 2 and 3 in Schedule 2 following the breach.