



guardians of drinking water quality  
**DRINKING WATER INSPECTORATE**

# **DRINKING WATER INSPECTORATE**

## **Guidance on the Regulatory Responsibilities of New (Inset) Appointees in relation to Public Water Supplies**

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## **Document History**

| <b>Revision No</b> | <b>Revision date</b> | <b>Purpose of revision</b> | <b>Revised by</b> |
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| 3.1                | August 2010          | Minor terminology change   | Steve Lambert     |
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**Preamble**

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| <p><b>Intended audience:</b></p> | <p>This document is aimed primarily at prospective and newly appointed water companies ('new appointees'). It may also be of use to others, such as the statutory water undertakers (ie. incumbent water companies). It does not apply to Water Supply Licensees [see separate guidance at <a href="http://www.dwi.gov.uk/stakeholders/guidance-and-codes-of-practice/index.htm">http://www.dwi.gov.uk/stakeholders/guidance-and-codes-of-practice/index.htm</a>].</p> <p>It has been prepared following consultation with Ofwat, CCWater, and representative new appointee and incumbent water companies in England and Wales.</p>  |
| <p><b>Regional coverage:</b></p> | <p>The guidance given in this document applies to water companies appointed via the inset appointment regime in England and Wales. The devolved administrations in Scotland and Northern Ireland have separate but parallel legislation.</p>   |
| <p><b>Legal status:</b></p>      | <p>This document has been produced to provide informal, non-binding advice on the regulatory responsibilities of new appointees, as prescribed primarily in the Water Industry Act 1991 and Water Supply (Water Quality) Regulations 2000* (Amendment) Regulations 2007. The text should not be taken as an authoritative statement or interpretation of the law. Every effort has been made to ensure that these guidance notes are as accurate and helpful as possible, although it is ultimately the responsibility of individual companies to ensure compliance with the law. Companies with specific queries may wish to seek advice from DWI.</p> <p style="text-align: right;">*2001 in Wales</p>   |
| <p><b>Purpose:</b></p>           | <p>This document is intended to provide guidance to prospective and newly appointed water companies in respect of the regulatory requirements associated with public water supplies intended for drinking, cooking, washing and food production purposes. It does not apply to private water supplies, 'grey waters' or treated waters supplied for industrial processes only.</p> <p>This document will be reviewed and updated as necessary. It should also be read in conjunction with current guidance issued by the Water Services Regulation Authority ("Ofwat") which, at the time of issue, was the 'Policy on New Appointments and Variations', available on the Ofwat website :<br/> <a href="http://www.ofwat.gov.uk/competition/prs_web_insetpolicyletter230109">http://www.ofwat.gov.uk/competition/prs_web_insetpolicyletter230109</a></p> |

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## **DWI Guidance on the Regulatory Responsibilities of New (Inset) Appointees in relation to Public Water Supplies**

### **1. Summary**

- 1.1. Applicants are required to publish, and submit to Ofwat, a notice of each new appointment (or variation) application. They should also forward a copy of each notice to DWI.
- 1.2. When a notice is received, DWI will assess an applicant's competency to supply water through its supply system for domestic (including site office) and food production purposes. Water must not be supplied through new supply systems for such purposes until the DWI's competency assessment has been completed. Companies will be informed of this in writing for each new appointment (or variation) upon completion. Applicants are therefore encouraged to engage with DWI at an early stage of each application to ensure permission to supply water is not delayed.
- 1.3. The DWI competency assessment consists of two stages. The first stage relates primarily to applicants new to treating or supplying water, as appropriate, and requires them to demonstrate that they possess the knowledge and regulatory awareness required of an appointed water company. This stage may be undertaken at any time although must be completed before DWI supports an application for a new (inset) appointment being progressed by Ofwat to public consultation. Applicants should also allow sufficient time (up to three months) for completion of this assessment stage before the intention to supply water for domestic and food production purposes.
- 1.4. The second DWI assessment stage is to verify that all applicants are adopting a risk assessment and risk management approach to the safety of drinking water supplies. This stage is independent of Ofwat and may be undertaken at any time before or after a new appointment (or variation) has been awarded, although it must be completed before water can be supplied for regulation 4 purposes. It primarily requires an applicant to submit to DWI a satisfactory 'Regulation 28 Risk Assessment Report' for each area of supply. Applicants are, however, also required to submit, or arrange to have submitted, water quality monitoring and other data to DWI. Other requirements are also likely to be asked of applicants intending to treat water.
- 1.5. New appointees should separately notify DWI immediately prior to commencing any permanent supply of water through fixed infrastructure for regulation 4 purposes.

## **DWI Guidance on the Regulatory Responsibilities of New (Inset) Appointees in relation to Public Water Supplies**

### **2. Water Quality Requirements and the Drinking Water Inspectorate**

- 2.1. The regulatory framework for water supplies in England and Wales is set out in the Water Industry Act 1991 (“WIA91”). Under WIA91, the authorities responsible for regulating the quality of public supplies are the Secretary State for Environment, Food and Rural Affairs and Welsh Assembly Government. However, the Chief Inspector of Drinking Water and Drinking Water Inspectorate (“DWI”) are appointed under Section 86 of the WIA91<sup>1</sup> to act on their behalf. WIA91 defines the powers and duties of DWI as well as the duties of the water companies.
- 2.2. The primary European legislation relating to the quality of water intended for human consumption is the 1998 EU Drinking Water Directive (98/83/EC). The requirements of this Directive are implemented in England and Wales by the Water Supply (Water Quality) Regulations<sup>2</sup> (“the Regulations”). Any new appointment (or variation) involving the supply of water for the purposes of drinking, washing, cooking or food production is required to comply with the Regulations. The principal function of DWI is to enforce the Regulations.
- 2.3. **In discharging its duties, DWI will have regard to ensure that the public health aspects of drinking water quality are not compromised and that public confidence in the quality of tap water not undermined.**
- 2.4. Further guidance on the implementation of the Regulations is available on the DWI website at <http://www.dwi.gov.uk/stakeholders/guidance-and-codes-of-practice/index.htm>

### **3. What are New (Inset) Appointments?**

- 3.1. A new (inset) appointment (or variation) provides the opportunity for one water company to replace another as the supplier of water and/or sewerage services within a specified geographical area. Upon appointment, the new appointee has the same regulatory obligations as would the incumbent for the specified area.
- 3.2. New appointments are different to water supply licences permitted under WIA91<sup>3</sup>. In contrast to new appointments, water supply licences allow holders to have access to another water company’s supply system in order that they may

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<sup>1</sup> The functions of DWI were established under Section 60 of the Water Act 1989 and Section 86 of WIA91, although have since been amended by Section 57 of the Water Act 2003.

<sup>2</sup> Water Supply (Water Quality) Regulations 2000 (Amendment) Regulations 2007 (SI 2007 No.2734) in England; and Water Supply (Water Quality) Regulations 2001 (Amendment) Regulations 2007 (SI 2007 No.3374 (W.299)) in Wales

<sup>3</sup> As amended by Section 56 and Schedule 4 of the Water Act 2003

sell a water supply to eligible users. Eligible users are those using at least 50 megalitres (Ml) of water per year. A retail water supply licence entitles the holder to purchase a supply of water from a water company and sell it to an eligible user, while a combined water supply licence has a supplementary authorisation enabling the holder to introduce water into a water company's supply system as well as sell that water to an eligible user.

- 3.3. The framework for new appointments (and variations) is set out in WIA91, and Section 7 gives the three criteria<sup>4</sup> under which a new appointment (or variation) may be granted:
- the consent criterion, where an incumbent consents to the appointment (or variation);
  - the unserved criterion, where the appointment (or variation) is for an area in which none of the premises is currently served by an appointed company. This criterion thus also applies to areas currently supplied by unregulated or 'private' suppliers with their own sources of water;
  - the large user criterion, where the appointment (or variation) is for an area in which each of one or more premises is supplied (or is likely to be supplied) with at least 50 megalitres (Ml) of water in England or 250 Ml of water in Wales, in any 12 month period.

Applicants are required to meet at least one of the above criteria

#### **4. New Appointment Application Process**

- 4.1. Applications for each new appointment (or variation) are submitted for consideration to Ofwat, the economic regulator of the water and sewerage sectors in England and Wales. Applicants are subsequently required to publish a notice of their completed applications and circulate copies to a number of stakeholders. Copies of these notices should also be sent to DWI.
- 4.2. DWI plays an important role with Ofwat in assessing whether an applicant has an appropriate level of competency. It implements a two-stage process, which is initiated upon receipt of a notice of application. Details of what this assessment might typically comprise are given in Part 5 of this Guidance.
- 4.3. Applicants new to the water industry, or where there is a significant change to the required competencies (eg. treatment of water as well as its distribution) should allow sufficient time (up to 3 months) for completion of the first-stage assessment. Upon completion of the first-stage assessment, DWI will advise Ofwat of its conclusions and, provided that the application is satisfactory, offer support for an application to progress towards the statutory public consultation stage. Failure to liaise with DWI at an early stage may thus delay the progress of

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<sup>4</sup> The large user criterion was inserted into Section 7(5) of WIA91 by the Competition and Service (Utilities) Act 1992, although this was subsequently amended by the Water & Sewerage Undertakers (Inset Appointments) Regulations 2000 (SI 2000 No.1842), and re-amended by the Water & Sewerage Undertakers (Inset Appointments) Regulations 2005 (SI 2005 No.268)

an application to public consultation.

- 4.4. DWI's second-stage assessment will normally be carried out during the public consultation stage although, as it does not form part of Ofwat's assessment process, can commence at any time in the application process, including after a new appointment (or variation) has been awarded. Applicants should allow up to 20 working days before it intends to commence supplying water for DWI to complete its second-stage assessment.
- 4.5. Water must not be supplied through new supply systems for domestic and food production purposes until DWI's second-stage assessment has been completed. This will be done in writing by DWI for each new appointment (or variation).
- 4.6. Any temporary supplies of water used in site offices and canteens etc for drinking, washing, cooking or food preparation purposes are required to fully comply with the Regulations, irrespective of whether supplied by a new appointee or incumbent.
- 4.7. New appointees should also separately notify DWI immediately prior to commencing with any permanent supply of water through fixed infrastructure for regulation 4 purposes.

## **5. DWI Assessment of Water Company Competency**

- 5.1. As appointed water companies, all new appointees need to be aware of their statutory obligations and responsibilities. They should have a good knowledge of water supply and water quality issues, as well as an understanding of the issues that might affect their particular activities.
- 5.2. The DWI assessment of an applicant's competency to maintain the quality of the drinking water supply will vary from case to case and with each appointment (or variation). It will take into account the previous experience and qualifications of the company directors, managers and sub-contractors. However, the expectation should be that all applicants new to the water industry, or where there is a significant change to the required competencies, will be invited for interview to discuss their applications.
- 5.3. In carrying out its assessments, DWI will conform to the Hampton Principles of Better Regulation and ensure that all water companies are subject to the same level of regulation. DWI is funded from public funds and there is currently no fee associated with its competency assessments.

### *First-Stage (Stage I) Assessment*

- 5.4. The first-stage of DWI's assessment requires applicants to demonstrate their awareness of the responsibilities and duties of appointed water companies, which include, but are not limited to:

- Sections 18, 19, 67-70, 86, 202 and 208 of WIA91
  - Relevant DWI information direction(s) made under Section 208 of WIA91
  - The Regulations
  - Drinking Water Safety Plans and the requirements of regulations 27 and 28
  - The Water Supply (Water Fittings) Regulations 1999<sup>5</sup>
  - The need for regular and on-going water quality monitoring
  - The technical competencies required to operate and manage a water treatment works capable of treating its source water, and/or the connected supply system, as applicable
- 5.5. Applicants are also required to satisfy DWI that they have adequate knowledge of :
- The role of DWI
  - The regulatory requirements to provide wholesome water, and the penalties and sanctions if contraventions occur
  - The definition of water unfit for human consumption and penalties for supplying it
  - The requirement to maintain the national engineering specifications and codes of practice adhered to by the statutory water undertakers<sup>6</sup>
  - The potential impact of mixing waters of different quality
  - Water treatment processes (as applicable)
  - Approved substances, products and processes for use in the treatment and provision of public water supplies<sup>7</sup>
  - The framework associated with installing water infrastructure (see Part 6.2)
  - The potential impact of supply system activities and hydraulics on water quality
  - The notification requirements of the Water Industry (Suppliers' Information) Direction 2009
  - Relevant security and emergency measures<sup>8</sup>

It is for applicants to decide how they are best able to demonstrate their knowledge and awareness to DWI.

### *Second-Stage (Stage II) Assessment*

- 5.6. The purpose of DWI's second-stage assessment is to verify that the ongoing

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<sup>5</sup> As amended by the Water Supply (Water Fittings) (Amendment) Regulations 1999 (SI 1999 No.1506)

<sup>6</sup> For example, Civil Engineering Specification for the Water Industry (WRc/UKWIR); Principles of Water Supply Hygiene and Technical Guidance Notes (WaterUK); Microbiology of Drinking Water (Environment Agency)

<sup>7</sup> The current list of approved products for use in public water supply in the United Kingdom can be downloaded from the DWI website at: <http://www.dwi.gov.uk/drinking-water-products/approved-products/index.htm>

<sup>8</sup> Guidance can be downloaded from the DWI website at <http://www.dwi.gov.uk/stakeholders/guidance-and-codes-of-practice/index.htm>

safety of drinking water supplies is assured and a comprehensive risk assessment and risk management approach is being applied to each supply.

- 5.7. All water companies are required to undertake a comprehensive risk assessment of each water treatment works and connected supply system, as prescribed by regulation 27. It is recommended that these risk assessments use the WHO water safety plan approach<sup>9</sup> and must encompass all hazards and hazardous events that could arise from the source (including the catchment) to the consumer's drinking water tap.
- 5.8. The risk of each hazard / hazardous event should subsequently be characterised using a scoring system based on likelihood and consequence criteria, examples of which were given by DWI in Annex B to Information Letter 2/2008<sup>10</sup>. Using this methodology, companies should identify any residual risks and whether they are acceptable or unacceptable in nature. DWI interprets any unacceptable residual risks identified through a water safety plan approach as having the same meaning as the term in regulation 28 of “significant risk of...a potential danger to human health” and requires that further action also be identified and taken to control or mitigate those risks.
- 5.9. Under regulation 28 water companies are required as soon as reasonably practicable to provide DWI with a report of each regulation 27 risk assessment. Guidance on the submission of regulation 28 reports, as well as an example reporting format was given by DWI in Information Letter 7/2008.
- 5.10. As part of its risk assessment process, applicants will need to liaise with incumbent water companies to obtain generic risk and other information relevant to the bulk supplies received. Incumbent companies and their representatives must also comply with the Competition Act 1998, which prohibits any abuse of their dominant position. However, this does not require incumbent companies to communicate their entire regulation 28 documentation and Water Safety Plan methodologies. Examples of the risk information that might be exchanged between companies includes:
- Relevant Section A<sup>11</sup> information (asset information on the relevant treatment works, storage points and upstream water supply zones)
  - An outline of the incumbent company's risk assessment methodology, including how unacceptable risks have been quantified
  - Full details of all unacceptable residual risks present in the upstream supply system
  - Full details of the action plans in place to reduce these risks
  - Details of any Notices, Undertakings, Authorised Departures or Acknowledged Actions in place (see Part 7.4)

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<sup>9</sup> As outlined in WHO (2008) Guidelines for drinking-water quality, Third edition incorporating the first and second addenda, Volume 1: Recommendations, World Health Organization, Geneva. ISBN 978 92 4 154761 1

<sup>10</sup> DWI information letters can be downloaded from: <http://www.dwi.gov.uk/stakeholders/information-letters/index.htm>

<sup>11</sup> Refer to the Annex of Information letter 7/2008

- Operational ‘reactive’ liaison trigger values for day to day exceedances, for events and for the notification of any new unacceptable risks as they arise (see Part 6.18)
- Details, where relevant, of site-specific monitoring strategies in relation to, for example pesticides, to enable monitoring to be aligned (see Parts 6.8 and 6.9)
- Contact details for working hours and out of hours
- Arrangements for the exchange of regulatory monitoring data for each of the assets upstream of a bulk import/export point, and any other relevant information to enable the completion of regulatory returns
- Liaison arrangements and meeting dates to discuss all of the above and any other matters arising.

## **6. Additional Obligations and Responsibilities of Water Companies**

### *Water Fittings, Materials and Activities in Contact with Water*

- 6.1. The introduction of any substance into drinking water supplies that might adversely affect its quality should be prevented. Accordingly, all materials from source to the point of delivery that come into contact with the water supplied, including all chemicals and construction products, must be approved under regulation 31. The current list of approved materials, as well as details of how approvals may be obtained, is available from the DWI website at <http://www.dwi.gov.uk/drinking-water-products/approved-products/index.htm>
- 6.2. Water companies providing water infrastructure should ensure it complies with the highest standards of installation and maintenance for the essential protection of water quality. All installations should conform to the Principles of Water Supply Hygiene and Technical Guidance Notes, and design specifications cover the types of materials and methods of working to be used in contaminated land<sup>12</sup>.
- 6.3. Any person undertaking work on the water network should have an appropriate level of relevant skills, knowledge and understanding. Only contractors with proven capability and experience, such as those with Water Industry Registration Scheme (WIRS)<sup>13</sup> accreditation, should be used for the installation and commissioning of water mains and services. All personnel working on restricted operations sites, such as service reservoirs, pumping stations, treatment works, wells, springs and boreholes; on the network of water mains and service pipes; or, more generally, with a potential for contact with treated water supplies, must be in possession of a valid Energy & Utility Skills (EUSR) National Water

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<sup>12</sup> Guidance to companies on the principles of water supply hygiene can be downloaded from the WaterUK website at: <http://www.water.org.uk/home/policy/reports/industry-guidance/principles-of-water-supply-hygiene>, on the UKWIR Code of Practice for the self-lay of water mains and services from the WRc website at: <http://selflay.wrcplc.co.uk/>, and on competition in providing new water mains and service pipes from the Ofwat website at: <http://www.ofwat.gov.uk/consumerissues/selflay/>

<sup>13</sup> Further details about WIRS accreditation can be found at : <http://www.lloydsregister.co.uk/wirs.html>

Hygiene card<sup>14</sup>.

- 6.4. Contamination of water supplies can also occur when a decrease in pressure causes water to travel in the reverse direction in a pipe (backflow). New appointees must ensure that appropriate measures are in place to protect public water supplies against contamination from backflow, in accordance with Sections 73 to 75 of WIA91.
- 6.5. Property owners are responsible for the pipe work from their curtilage onwards. However, as appointed water companies, new appointees are responsible for enforcing the Water Supply (Water Fittings) Regulations 1999 (as amended) in their areas of supply to prevent the waste, misuse, undue consumption, erroneous measurement and, in particular, contamination of drinking water supplies. Technical advice and assistance in relation to water fittings is available from the Water Regulations Advisory Scheme (WRAS)<sup>15</sup>.

#### *Water Quality Monitoring*

- 6.6. Each new appointment (or variation) should be regarded as a discrete water supply zone(s) and regulatory water quality monitoring undertaken at consumers' taps or supply points (as appropriate) by the appointed companies on the basis of the estimated number of consumers or volumes of water supplied by each appointment (or variation), respectively. Sample collection and analysis requirements are described in regulations 12 to 16, and standard sampling frequencies for each parameter in Schedule 3 of the Regulations. All companies are expected to follow best practice in respect of sampling, sample storage and analysis, as set out in the Microbiology of Drinking Water<sup>16</sup> and use laboratories accredited to undertake water analyses, as required by regulation 16.
- 6.7. There is no requirement under the Regulations for water companies to monitor water that is not used for drinking, washing, cooking or food production purposes, including for grey-water purposes, or treated water supplied only for industrial processes. However, most industrial sites are likely to have drinking water and hand washing provisions, and monitoring at such sites should be based on the extent of this usage.
- 6.8. Monitoring strategies should be based on risk and evaluated each calendar year. However, if at any time a company has any reasonable grounds for believing that a parameter not included in its monitoring strategy could be present at a concentration that might compromise the 'wholesomeness' of the water, it must include that parameter in its monitoring strategy as soon as practicable.

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<sup>14</sup> Details of how to obtain National Water Hygiene registration, as well as other relevant industry schemes, can be found on the EUSR website at: <http://www.eusr.co.uk/>

<sup>15</sup> The WRAS website can be found at: <http://www.wras.co.uk/>

<sup>16</sup> The Microbiology of Drinking Water is published by the Standing Committee of Analysts (SCA) and can be downloaded from the 'Commercial Services' section of the Environment Agency's website. See also BS ISO 5667-3, BS ISO 5667-5, and BS ISO 5667-21 and Information Letters 3/2005 and 12/2005 for additional guidance.

- 6.9. It is not practical or necessary to sample and analyse for every pesticide that might potentially be available for use within the catchment of a water source. Only those pesticides likely to be present in a given drinking water supply need to be monitored. However, where a supplying works has a process installed to remove or reduce specific pesticides, a new appointee receiving a bulk supply of water from that works must include those pesticides within its monitoring strategy. New appointees should consult with the incumbent company to discuss the pesticide monitoring strategy in place for the supplying works.
- 6.10. It will also be noted in the Regulations that the standards for most parameters apply at the consumer's tap. However, if a supply of water is derived from a single treatment source, regulation 8 allows companies to monitor compliance for non-labile parameters, such as pesticides, at supply points. Subject to prior approval of DWI, companies receiving a bulk supply may use data gathered from the supply point of the incumbent company in place of supply zone data. The new appointee will need to agree such arrangements with the incumbent company. Information Letter 18/2003 also advises companies on how to apply for DWI approval.
- 6.11. There is no requirement for a new appointee to carry out regulatory monitoring at the point of transfer although operational monitoring would be prudent. The new appointee also needs to be satisfied within its risk assessment and risk management systems that there are appropriate arrangements in place for the notification of any deterioration in the quality of the bulk supply.
- 6.12. The quality of water stored in any service reservoir under the operation of a new appointee must be monitored in accordance with the requirements of regulation 14.
- 6.13. If a new appointee operates a water treatment works to supply water for domestic or food production purposes, then it has a duty to monitor the quality of the water leaving the works, as prescribed in regulation 13, on the basis of the volume of water supplied. This requirement applies whether the treatment works is located within, or is remote from, the appointee's area of supply. If a company has more than one water treatment works supplying water, then this requirement applies to each works.
- 6.14. The raw water at the abstraction point(s) to each treatment works operated by a new appointee must also be monitored according to regulation 16A. Guidance in relation to raw water monitoring was given by DWI in Information Letter 4/2009. The monitoring requirements of new sources, or water sources that have not been used for potable supplies for 6 months or more, are also prescribed in regulation 15.

#### *Reporting Requirements*

- 6.15. New appointees are bound by the requirements of the Water Industry (Suppliers' Information) Direction 2009 in terms of providing DWI with data returns on water quality, digital boundary maps and other relevant information. Data table

templates and example breach reports are available from DWI upon request. Companies are encouraged to engage with DWI at an early stage in each application to ensure that all data and reporting requirements are achieved.

- 6.16. New appointees must submit to DWI monthly water quality data returns for water treatment works, service reservoirs, and water supply zones. Guidance in relation to such data was given in Information Letter 6/2003, as well as in subsequent amendments<sup>17</sup>. Where a water company (incumbent company or new appointee) has expanded its area of supply via the inset mechanism, data for each appointment (or variation) may be included in a single monthly data return so long as it is clearly indicated which results relate to which water supply zone.
- 6.17. The results of all regulatory monitoring must be available to members of the public and to consumers receiving the water, in accordance with the requirements of regulation 34. Likewise, regulation 35 requires a company to send any person a copy of the regulation 34 record within 7 days of receipt of a request.

#### *Water Quality Events*

- 6.18. New appointees must meet the requirements of the Water Industry (Suppliers' Information) Direction 2009 in terms of notifying DWI of any event in its area of supply which by reason of its effect on the sufficiency or quality of the drinking water may give rise to a significant risk to consumers' health, including consumer concern. Guidance on the notification process, as well as examples of the types of event to be notified, was given by DWI in Information Letter 2/2009. Local authorities, health authorities and the Consumer Council for Water (CCWater)<sup>18</sup> should also be notified as necessary. It is recommended that companies establish clear lines of communication with all parties for this purpose.
- 6.19. As part of its water safety plan approach, it is similarly recommended that clear lines of communication be established between a new appointee and adjacent water companies to provide prompt notification of any event within the appointed area that could impact on the surrounding water environment. Likewise, where a new appointee receives a bulk supply of treated water, there must be clear lines of communication between the new appointee and incumbent company to enable prompt notification of any event that is likely to affect the quality of the bulk supply. It is recommended that such lines of communication be set out in a communications plan and be tested periodically to ensure that they are up to date and effective.
- 6.20. DWI investigates all notifications it receives according to a risk-based approach and, in some cases, this can lead to a company, or any other 'relevant person', being prosecuted (see Part 8). The results and recommendations of all DWI investigations of notifications are made public.

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<sup>17</sup> Companies should also refer to Information Letters 11/2004, 10/2007, 3/2008 and 6/2009

<sup>18</sup> CCWater represents water and sewerage consumers in England and Wales

## **7. Enforcement Action**

- 7.1. A new appointee is defined under Section 6 of WIA91 as a ‘water undertaker’. Accordingly, when supplying water to any premises for domestic or food production purposes, new appointees are required under Section 68 of WIA91 to supply only water which is ‘wholesome’. This obligation is enforceable by DWI under Section 18 of WIA91 for any non-trivial breaches of the wholesomeness standards or other enforceable regulatory duties.
- 7.2. Where a new appointee has reason to believe that the water it is supplying fails, or is likely to fail, the standards for wholesomeness, regulation 17 requires that the company investigate the cause and extent of the failure, or likely failure, and as soon as possible thereafter notify DWI. The new appointee must also notify the incumbent water company according to its agreed communication plan referred to in Part 6.18.
- 7.3. Upon receiving notification of a failure, which in the view of DWI is not trivial, likely to recur, and not attributable to the domestic distribution system or its maintenance, DWI may issue a Notice under regulation 28 or take Enforcement Action under Section 18 of WIA91. Enforcement action means taking steps to make an enforcement order, although this can be suspended if the company gives and is complying with an Undertaking (ie. a legally-binding programme of remedial measures leading to compliance with the Regulations).
- 7.4. A new appointee importing a bulk supply of treated water to supply its appointed area will also need to be aware of any Notices or Undertakings relating to that bulk supply. It may then become necessary for the new appointee to make equivalent representations to DWI.

## **8. Liability for Offences**

- 8.1. Any ‘relevant person’ concerned in the supply of water can be liable under Section 70<sup>19</sup> of WIA91 of the offence of supplying water unfit for human consumption, subject to a due diligence defence. This means that water companies (including new appointees), combined licensees and/or their respective contractors may be investigated by DWI and may be prosecuted for an alleged offence. Criminal liability cannot be transferred.
- 8.2. DWI will mount a prosecution under Section 70 of WIA91 when:
- it has evidence to demonstrate that:
    - illness or other health effects were experienced by at least two consumers using the water supplied
    - the quality of the water supplied was such that at least two consumers rejected it for drinking or cooking or food production on aesthetic

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<sup>19</sup> As amended by Section 61 and Paragraph 20 of Schedule 8 of the Water Act 2003

grounds

- the analytical results showed the presence of organisms or substances at a concentration at which illness or other health effects may be expected, even when none were manifest in the community at the time
- it considers that the ‘relevant person’ does not have a defence that it took all reasonable steps and exercised all due diligence for securing that:
  - the water was fit for human consumption on leaving its pipes, or
  - the water supplied was not used for human consumption
- such a prosecution is regarded as being in the public interest

8.3. Current case law defines water unfit for human consumption as follows:

*“Water may be regarded as unfit for human consumption either if, when drunk it would be likely to, or did in fact, cause injury to the consumer, or, where by reason of its appearance and/or smell, it was of such quality that it would cause a reasonable consumer of firm character to refuse to drink it or use it in the preparation of food”*

8.4. DWI may also mount a prosecution, subject to a due diligence defence, for any offence relating to:

- Regulation 26(1) and 26(3) in respect of inadequate treatment or disinfection of water leaving a treatment works intended for domestic or food production purposes.
- Regulation 28(4)(d) in respect of contravening a notice prohibiting the supply of water
- Regulations 31(2) (use of unapproved products), 31(8) (contravention of a prohibition notice), 32(1) (use of a process in contravention of a prohibition notice) and 32(2) (failure to observe conditions of approval of a process)

8.5. New appointees are also liable under Section 86 of WIA91 in the event of failing to provide a drinking water inspector with all such assistance and all such information as may reasonably be required.

8.6. For offences that do not justify full Court proceedings DWI may issue a caution, which a Court could take into account in any future offences.

## **9. Relationship with DWI**

9.1. All new appointees should establish and maintain contact with DWI at the earliest opportunity in the application process, as well as appointing day to day liaison and director contacts to ensure effective, on-going communication. Companies are also expected to liaise with DWI in respect of their water quality data submissions.

9.2. All new appointees will receive and be expected to comply with any instructions or advice given in past or future Information Letters. They will also be expected to act on any other DWI communication.

- 9.3. All new appointees will be subject to audit and inspection by DWI or representatives acting on DWI's behalf.

## **10. Contact**

- 10.1. All enquiries relating to this Guidance, submission of Notices of application or other related matters should, in the first instance, be directed to:  
Drinking Water Inspectorate, 55 Whitehall, London SW1A 2EY;  
Tel : 0300 068 6400; Email : [DWI.Enquiries@defra.gsi.gov.uk](mailto:DWI.Enquiries@defra.gsi.gov.uk)

### 11. Process Chart and Timescales of a New (Inset) Appointment Application

