Consultation on the future management of private water supply pipes

We welcome the opportunity to respond to Defra’s consultation on the proposals for the future management of private water supply pipes.

1. Introduction

1.1 The Drinking Water Inspectorate (DWI) is the independent regulator of drinking water quality in England and Wales. We protect public health and maintain confidence in public water supplies by ensuring water companies supply safe clean drinking water that meets EU and national standards. Where standards are not met, we have the power to require a water supply to be improved. We also have the power to take forward prosecutions where there is evidence that an offence may have been committed.

1.2 We publish information about drinking water quality and provide technical advice to the Secretary of State for the Environment, Food & Rural Affairs, and to Welsh Ministers.

2. Comments on consultation

2.1 We note that Defra’s preferred option (Option 2) is to create a power to regulate for the compulsory adoption of private supply pipes by water companies. We do not have a particular view on this policy but we wish to make some comments that may be pertinent to Defra’s decision on implementation of such regulations.

2.2 The consultation document refers throughout to water supply companies. It is not clear from the document that this should include existing Inset Appointees.
Inset Appointments are an existing licensing arrangement where a new appointee may supply a geographically discrete area previously not served by any incumbent water company, or where the customer is a large-user of water meeting set criteria. In these situations, if the preferred option were to be implemented, inset appointees would be bound to adopt the private water supply pipes in their licensed inset areas, since they own the distribution pipework and associated apparatus. We have included a comment about current discussions on market reform in paragraph 2.12 below.

2.3 Under Section 75 of the Water Industry Act 1991 (the Act), water companies (including Inset Appointees as referred to above) already have the power to enforce replacement of defective private apparatus where the apparatus is the cause of any contamination, misuse or undue consumption of water supplied by a water undertaker (which includes licensed suppliers). Therefore this includes wastage of water (leakage) and unwholesomeness (contamination). Anecdotal information suggests that, in practice, these powers are rarely used against domestic householders. As indicated in the consultation document, many water companies will repair leaking supply pipes free of charge with voluntary agreement of property-owners. Where a private supply pipe is the cause of unwholesome water, water companies have the power to enforce property owners to replace or repair the defective apparatus, but again, in respect of domestic householders, we believe that these powers are rarely applied. Instead householders are given written advice on how to mitigate or resolve the problem. Such notifications are a requirement of Article 6 of the Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption, transposed into English law through regulation 17(6) of the Water Supply (Water Quality) Regulations 2000, and in Wales through Regulation 18(7) in the Welsh Regulations (from here on referred to collectively as the Drinking Water Quality (DWQ) Regulations).

2.4 S75 powers allow a water company to carry out necessary remedial works and recover the cost from the property owner. Therefore if option 1 (a voluntary code of practice) were implemented, there would be no change to the existing situation, save that that water companies would have to agree to fund the cost of remediation.

2.5 Regulation 19A of the DWQ Regulations confers powers on the Secretary of State to enforce that companies exercise their powers under s75 if a failure of a drinking water quality parameter is caused by the condition of the private domestic system in a building where drinking water is made available to members of the public (for example schools, nurseries, restaurants, hotels, care homes and hospitals).

2.6 Option 2 in the Consultation document indicates that any secondary legislation implemented could relate to just households, or households and non-households. Regulation 4 of the DWQ Regulations requires water companies to supply water that is wholesome, wherever the supply is used for domestic purposes, in both households and non-households. Domestic

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1 http://www.ofwat.gov.uk/competition/inset/
purposes include cooking, drinking, food preparation, washing, laundry, heating and sanitation. Non-household premises include, for example, care homes, schools, hospitals, hotels, restaurants and commercial premises where a domestic water supply is made available to members of the public or other consumers who may be present on the premises because they are an employee, a temporary or permanent resident or a paying customer. We would, therefore, consider that, as a minimum, Option 2 should be applied to supply pipes supplying water for domestic purposes irrespective of the type of premises.

2.7 If Option 2 were to be implemented, covering supply pipes supplying water for domestic purposes as described in 2.6 above, then ministers will need to consider the situation with respect to pipes supplying water for wholly non-domestic purposes, including, for example, factory process water, cooling water and animal troughs. Under s75 of the Act companies would still have the powers to prevent contamination, misuse and undue consumption in these supplies.

2.8 Water supply pipes can be the cause of a number of drinking water quality problems. For example older black plastic pipes can taint water with a pencil-like odour or taste. Modern blue plastic pipes as well as older types can also be affected by migration of fuel through the pipe from soil contaminated by petrol or diesel. If water supply pipes became vested in the water company, water companies would then have a statutory duty to resolve these problems by, for example, replacing the pipe and possibly remediating any contaminated ground. Without any legal right of access, this would require agreement of the landowner. Therefore if the decision is taken to implement Option 2, ministers may need to consider whether the rights of entry conferred on companies under the Act are sufficient to carry out necessary works in these situations.

2.9 As pipes age they are prone to give rise to water quality problems. In particular, older lead and galvanised iron pipes are known causes of failures of the drinking water quality standards for lead, iron and turbidity, and, less often, microbiological failures. If, under Option 2, a failure of a drinking water quality standard was caused by a supply pipe vested in the water company, the water company would have a statutory duty to resolve the problem. As referred to in 2.8 above, ministers will need to consider whether there is a need for any additional rights of entry to enable companies to carry out remedial work.

2.10 Paragraph 24 in the consultation document indicates that implementation of Option 2 could facilitate a long-term strategy for the replacement of lead pipes using a risk-based approach. The water industry in England and Wales has, since privatisation, replaced a significant number of company-owned lead communication pipes. Additionally, the legal requirement to treat water supplies to minimise plumbosolvency has reduced consumer exposure to lead with a consequent reduction in numbers of samples failing the lead standard. Nationally, percentage compliance with the 10μg/l standard for lead that will take effect at the end of December 2013 is around 99%. Progressive replacement of all lead supply pipes by water companies would be costly. However the work could be spread over a number of years to minimise the impact on customers’ bills. Such work would
require either property owners agreeing voluntarily to the work being carried out, or statutory rights of access being vested in water companies. Research and experience to date has shown differing consumer attitudes to replacing lead pipes, with it being generally supported by families with young children but not necessarily by others. The industry is researching and developing innovative directional drilling and pipe-lining techniques that would reduce the disruption to property-owners of pipe replacement.

2.11 Regulation 17(9) of the English DWQ Regulations and Regulation 18(10) in Wales relate specifically to lead and copper services. If a failure of the standard for lead or copper has occurred, the water company is required to modify or replace its part of the pipe that is the cause, or contributes to the cause, of the failure. The purpose of this is to eliminate company-owned apparatus from contributing to copper and lead failures. If Option 2 is implemented, these regulations will need to be amended, since companies will automatically have a statutory duty to replace or modify the whole pipe, not just the part owned by the company. The legal implications of this in respect of compliance with the DWQ regulations and the EC Directive will require careful consideration. Without an automatic right of access, there may arise situations where companies experience difficulties in obtaining the agreement of property-owners to carry out necessary works.

2.12 With reference to paragraph 27 of the consultation document, the proposal for compulsory adoption of supply pipes is relevant to current discussions about market reform and wholesale/retail separation. There is the potential for legal complexities to arise around the ownership of supply pipes if compulsory adoption were to apply to all commercial customers. It will need to be made clear for all wholesale and retail licensing scenarios where ownership of supply pipes is vested.

Yours sincerely

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