

# **Contents**

**Foreword by Minister for the Department of the Environment**

**Consultation Arrangements**

**Freedom of Information Act 2000**

**Executive Summary**

## **Section 1: Introduction and Background**

Directive 98/83/EC  
Public Water Supplies  
Private Water Supplies  
Regulation of Private Water Supplies  
The Proposed Regulations  
Liaison between UK Administrations

## **Section 2: Chapters**

Exemptions  
Wholesomeness  
New Installations  
Risk Assessments  
Monitoring  
Small Shared Domestic Supplies  
Supplies to Single Private Dwellings  
Sampling and Analysis  
Maintenance of Records  
Publication of Information  
Action in the Event of Failure

- Provision of Information
- Investigation
- Failure due to domestic distribution system
- Authorisations
- Improvement Notices
- Restriction Notices
- Change in persons
- Appeals

### Enforcement

- Power to enter premises
- Powers of authorised persons
- Provision of information
- Obstruction
- Penalties

## **Section 3: Summary of Issues for Consultation**

Annex A      Council Directive 98/83/EC of 3 November 1998 on the  
                         quality of water intended for human consumption

- Annex B The Draft Private Water Supplies Regulations (Northern Ireland)
- Annex C Partial Regulatory Impact Assessment
- Annex D Equality Screening Impact Assessment
- Annex E List of Consultees

## **Foreword**

My Department aims to ensure that those who rely on private drinking water supplies, or those who consume food in which the water from a private supply is part of the production process, can be assured of the quality and safety of the water.

Private water supplies can be drawn from a variety of surface and groundwater sources. Surface sources include streams and rivers as well as private impoundment reservoirs. Groundwater sources, which constitute the majority of private supplies in Northern Ireland, include wells, boreholes and springs.

There are about 4,000 to 5,000 private water supplies in Northern Ireland. The majority of these are domestic supplies serving single private dwellings. The main scope of the proposed Regulations, however, covers:

- private supplies which are used in food production; and
- other commercial supplies serving the public e.g. guest houses;

The current regulatory framework for such supplies is set out in the Private Water Supplies Regulations (Northern Ireland) 1994. These Regulations are administered by the Drinking Water Inspectorate for Northern Ireland, which works closely with the District Councils in the outworking of the Regulations. However, this regulatory framework needs to be updated to meet the requirements of the 1998 EU Drinking Water Directive, which sets some new and some improved standards for drinking water quality, as recommended by the World Health Organisation's guidelines.

For public water supplies in Northern Ireland, the Directive has been transposed by the Water Supply (Water Quality) Regulations (Northern Ireland) 2007. However for private water supplies, these draft Private Water Supplies Regulations (Northern Ireland) 2009 are intended to transpose the Directive, the objective being to improve the quality standards of our private supplies and to protect the health of consumers of food prepared from those private supplies.

The purpose of this consultation document is to set out my Department's draft proposals for new Regulations and to seek views on the proposed changes to the regulatory framework arising from the implementation of the 1998 Directive.

I encourage you to respond to this public consultation, as your views will help the Department put in place a structure to improve the quality of our private drinking water and ensure the provision of a wholesome water supply for all.

**Minister for the Department of the Environment**

## **Consultation Arrangements**

**Comments on the issues and proposals raised in this paper should reach the Department by 09/09/2009**

Comments may be made as follows:

In writing to

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By Fax                      028 9025 4732

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By Text phone:         028 9054 0642

Further copies of this paper may be obtained from the above address on written request or by telephoning 028 9025 4924. The paper can also be accessed online at: <http://www.doeni.gov.uk>

### **Further Information**

Should you require a copy of this paper in an alternative format it can be made available on request in large print, disc, Braille, audiocassette, or text phone for the hearing impaired. The document may also be made available on request in minority ethnic languages to those who are not proficient in English. The Department will translate executive summaries of key publications into Irish or Ulster Scots upon request. Information and additional copies of the document can be requested by text – phone on: 028 9054 0642.

A list of the consultees that we have contacted directly for this exercise is attached at Appendix E. This list is not exhaustive and we welcome views from all interested parties.

## **Freedom of Information Act 2000 – confidentiality of consultations**

Please note that the Department of the Environment may in due course wish to publish responses to this consultation document. The Department will publish a summary of responses following completion of the consultation process. Your response and all other responses to the consultation may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations as they will give you guidance on the legal position about any information given by you in response to this consultation.

The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity should be made public or be treated as confidential.

This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

- The Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
- The Department should not agree to hold information received from third parties 'in confidence' which is not confidential in nature; and
- Acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

For further information about confidentiality of responses please contact the Information Commissioner's Office or see the web site at <http://www.informationcommissioner.gov.uk>

## **Executive Summary**

This Consultation Paper describes the Department's proposals for the transposition into Northern Ireland law, and the subsequent implementation of EC Directive 98/83/EC on the quality of water intended for human consumption<sup>1</sup> (the Directive), as it applies to private water supplies. A copy of the Directive is attached at Annex A. New Regulations are needed to fully transpose the obligations of the Directive and will replace the current 1994 Regulations in respect of private water supplies in Northern Ireland.

The Directive has already been transposed for the purposes of public water supplies – the current corresponding Regulations are The Water Supply (Water Quality) Regulations (Northern Ireland) 2007. The Department of Regional Development in Northern Ireland is responsible for policy in relation to the public water supply.

The proposed Regulations are provisionally entitled "The Private Water Supplies Regulations (Northern Ireland) 2009".

The purpose of this paper is to encourage owners and users of private water supplies and others who may have a personal or professional interest in such supplies to comment on the particular proposals and on the other issues highlighted in the paper. The Department will assess all responses carefully and will use them to inform the shape of future policy and the final Regulations.

The proposed Regulations are to be made in exercise of powers conferred by the Water and Sewerage Services (Northern Ireland) Order 2006 in respect of DOE functions in relation to private supplies, and under section 2(2) of the European Communities Act 1972.

The Consultation Paper discusses the meanings of core terms and expressions that are used in the proposed Regulations, for example, the meaning of a 'private water supply', and an explanation of what is meant by 'wholesome'.

It also considers issues such as the purposes and use of risk assessments, sampling and analysis (monitoring) of supplies, investigations to discover the reasons why a supply is unwholesome, and what may happen when an unwholesome supply is a risk to human health.

The Paper explains how important provisions may apply and interact, for example the different options that will be available to the Department either to agree suitable remedial measures informally with owners when a supply is unwholesome but does not pose a significant risk to human health, or to take formal remedial action, such as serving an "improvement notice" or a "restriction notice" on an owner or other responsible person when there is a more serious health risk.

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<sup>1</sup> OJ L 330/32 5.12.98

The Paper describes proposed new offences of failing to comply with the terms of improvement notices and restriction notices, and it explains that a responsible person who is aggrieved by one of these proposed new regulatory notices may appeal to the Water Appeals Commission.

It sets out a proposed new scheme of “authorisations” of different standards that will supersede the current powers contained in the 1994 Regulations. The proposed new powers will enable the Department to issue temporary authorisations (derogations) from the non-microbiological (chemical) standards of wholesomeness whilst the owner or other responsible person takes remedial action. Of course such “authorisations” are time bounded and will not be granted if there is a risk to human health.

The Department will have the power to enforce the Regulations, for example where a failed supply poses a risk to human health and the responsible person has not taken the remedial measures required by an improvement notice or a restriction notice.

The Department already keeps records of private water supplies and publishes an annual report. This Paper specifies additional records the Department will be required to keep in respect of private supplies and the requirement on the Department to continue to publish an annual report about private supplies.

The Schedules attached to the Regulations are concerned with drinking water standards (Schedule 1); requirements for risk assessment (Schedule 2); monitoring (Schedule 3); sampling and analysis (Schedule 4); and records (Schedule 5).

## **Section 1**

### **Introduction and Background**

#### ***Directive 98/83/EC***

1.1 European Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (“the Directive”) covers all drinking water supplies whether public water supplies provided by Northern Ireland Water (the water undertaker for Northern Ireland) or private supplies used by commercial organisations or private individuals. Member States are required to transpose the Directive into their national law.

1.2 The Directive sets new standards for water intended for human consumption (“drinking water”) that Member States are required to meet. It also sets indicator parameter values for monitoring purposes, but Member States are only required to take action when non-compliance of an indicator parameter value is judged to be a risk to human health. The standards for wholesomeness and the indicator parameter values apply at the supply points normally used for human consumption.

#### ***Public water supplies***

1.3 The Water Supply (Water Quality) Regulations 2002 and the Water Supply (Water Quality) (Amendment) Regulations 2003 transposed the Directive into law in respect of public water supplies provided by the then Water Service. These Regulations were replaced by the Water Supply (Water Quality) Regulations (Northern Ireland) 2007 (“The 2007 Public Water Supply Regulations”) in order to reflect the change in delivery of water services from the Department of Regional Development Water Service to Northern Ireland Water Limited.

1.4 The 2007 Public Water Supply Regulations, and the Regulations which preceded them, are primarily concerned with the quality of water supplied for drinking, washing, cooking and food production, and with arrangements for the publication of information about water quality.

#### ***Private water supplies***

1.5 Private Water Supplies are generally defined as any supplies of water provided otherwise than by Northern Ireland Water Limited - the statutory water undertaker for Northern Ireland.

1.6 Such water supplies may be drawn from a variety of surface and groundwater sources. Surface sources include streams and rivers as well as private impoundment reservoirs. Groundwater sources include wells, boreholes and springs, which utilise water contained in underground aquifers.

The majority of private water supplies within Northern Ireland are drawn from groundwater sources.

1.7 At present, private water supplies are regulated by The Private Water Supplies Regulations (Northern Ireland) 1994<sup>1</sup> (“the current Regulations”), made under the Water and Sewerage Services (NI) Order 1973 which has recently been repealed and replaced by the Water and Sewerage Services (Northern Ireland) Order 2006<sup>2</sup>. The current Regulations implemented the previous Directive, 80/778/EEC, relating to the quality of water intended for human consumption<sup>3</sup> (“the previous Drinking Water Directive”). The Regulations are supplemented by guidance including information leaflets issued by the Drinking Water Inspectorate (DWI), and the Private Water Supplies Technical Manual<sup>4</sup>.

1.8 The new Directive places an absolute obligation on Member States to comply with its standards and other requirements.

1.9 In fulfilling the requirements of the Directive, the proposed Regulations introduce a duty on the Department and enforceable obligations on owners or other responsible persons to ensure that the standards for wholesomeness and other requirements are met.

1.10 It is estimated that there are 4,000 to 5,000 private water supplies in Northern Ireland. However, about 70% of these (approximately 3,000) are individual supplies to single private dwellings, which are not required to be registered with the Drinking Water Inspectorate under the current Regulations. The 1998 Directive continues to allow for exemption of such supplies provided the water is not supplied as part of a commercial or public activity. Of the 1263 supplies registered with the Inspectorate, 7.5% (**93 supplies**) are commercial (i.e. used for food production purposes or in establishments such as hotels or guest houses) and 1.5% (**18 supplies**) are shared domestic supplies. The remaining 91% relate to 1152 supplies on dairy farms.

1.11 Under the current procedures for the implementation of Private Water Supplies Regulations (Northern Ireland) 1994, water used in the cleaning and final rinse process in the milking parlour of a dairy farm is subject to one bacteriological test per annum. The monitoring of dairy farm supplies is carried out by the Quality Assurance Branch of Department of Agriculture and Rural Development. The Food Standards Agency (FSA), as the UK national competent authority for food hygiene, has not determined if using a private water supply for cleaning and final rinsing of dairy equipment could have an adverse effect on the safety of milk for consumers.

1.12 Although Scottish Ministers had proposed to include the use of private water supplies in milking parlours within the enhanced sampling and testing regime of the Private Water Supplies (Scotland) Regulations 2006, in the

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<sup>1</sup> SR 1994 No. 237

<sup>2</sup> S.I. 2006/3336 (N.I. 21)

<sup>3</sup> OJ L 229 30.8.1980

<sup>4</sup> [http://www.privatewatersupplies.gov.uk/private\\_water/CCC\\_FirstPage.jsp](http://www.privatewatersupplies.gov.uk/private_water/CCC_FirstPage.jsp) (updated)

absence of specific advice from FSA Scottish Ministers have issued an information letter, (Information Letter 1/2008) recommending revised monitoring arrangements for Dairy Farms until further notice. In essence the pre-2006 monitoring regime for Dairy Farms is maintained. The recent DEFRA (Department for Environment, Food and Rural Affairs) consultation on Private Water Supplies Regulations for England referred to the Scottish information letter and proposes to regulate Dairy Farms in England on that basis. In Northern Ireland, it is proposed that the current monitoring procedures for dairy farms will continue, until such time as FSA makes its determination. This means that dairy farm supplies are not included in the scope of the proposed Regulations.

1.13 The current Regulations apply to private supplies which serve more than one household for purely domestic purposes, or are used in commercial food production, that is, the making, processing, preserving, preparing or marketing of food or drink (including water) for sale or for human consumption.

1.14 The Regulations identify water supplies by Category and by class within each Category. Within each Category the class of supply depends on the number of people served or the volume of water used.

1.15 A Category 1 supply is that used for drinking, washing or cooking, by people living in properties receiving the supply: water used solely for domestic purposes. Category 1 supplies are placed in classes A to E depending on the number of people supplied, or volume of water used.

1.16 A Category 2 supply is that used to make food or drink that is sold, or used in properties with a regularly changing population, for example hotels or guest houses. Category 2 supplies are placed in classes 1 to 5 depending on the volume of water used. Table 1 shows the numbers of private water supplies.

1.17 There are no prescribed sampling requirements for supplies serving single dwellings (Category 1, Class F supplies), in accordance with the Judgment of the European Court of Justice (Commission v Kingdom of Belgium C-42/89) in 1989.

**Table1**

<b>Category</b>	<b>No. of Supplies</b>
2.1	1
2.2	14
2.3	31
2.4	42
2.5	5
Small Supplies	18
Dairy Farms	1152

## **Regulation of Private Water Supplies**

1.18 The quality of the source of a private supply can be highly variable particularly following heavy rain. Some supplies are treated to remove impurities, while others have inadequate or no treatment. At times, some supplies are considered not safe to drink and present a risk to health, particularly for people who do not consume them regularly, such as occasional visitors. Vulnerable groups, such as immunosuppressed people, the very young and older people may be particularly prone to infections from inadequately treated private water supplies.

1.19 The greatest risk is from gastric and other illnesses caused by microbiological contamination of the supply. The most likely source of microbiological contamination in rural areas is animal excreta entering water sources from land where farm or wild animals graze. Another source of microbiological contamination is discharges from cesspits and septic tanks that store and treat domestic sewage. All those who drink water contaminated by micro-organisms are at risk of infection, but the risk is much higher for people who are exposed to the supply irregularly such as visitors, particularly to hotels, guest-houses and bed and breakfast establishments.

1.20 Although microbiological contamination presents the greatest risk to health, in some cases chemical contamination can be a risk. This may come about if pesticides are being used near to inadequately protected private water supplies, and there is also a risk from industrial pollution with chemicals such as chlorinated hydrocarbons which can persist in supplies for long periods. Some supplies may also have naturally occurring levels of chemicals for example arsenic or fluoride which can be found at levels which could pose a health risk if the water is consumed over long periods.

1.21 Private supplies can also become contaminated, after abstraction and any treatment, during distribution to the premises served and within the premises. Common causes of contamination during distribution are ingress of environmental water surrounding the pipe work when there is low pressure or loss of pressure in the distribution system and leaching of chemicals from inappropriate materials used in the pipe work. Common causes of contamination within premises are dissolving of metals from plumbing systems, particularly lead, and microbiological contamination from unhygienic taps.

### **The proposed Regulations**

1.22 It is proposed that the new Regulations should be entitled provisionally "The Private Water Supplies Regulations (Northern Ireland) 2009".

1.23 The proposed Regulations are to be made in exercise of powers conferred by the Water and Sewerage Services (Northern Ireland) Order 2006 ("The Water Order") in respect of DOE functions in relation to private supplies, and under section 2(2) of the European Communities Act 1972<sup>1</sup>. The Water

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<sup>1</sup> 1972 c. 68

Order allows for the Department to prescribe requirements in order for water from private supplies to be regarded, or not, as wholesome; to maintain a register of private supplies; and to make provision for obtaining information about the quality of private supplies. The enabling powers of Section 2(2) of the European Communities Act 1972 allow flexibility with regard to other provisions in order to transpose the Directive; including enabling the Department to include in the Regulations self-contained enforcement procedures with provision for appeal to the Water Appeals Commission.

1.24 Section 2(2) will also enable powers to be included in the new Regulations for the Department to put in place risk assessments of private supplies. Taking proactive measures, informed by the findings of risk assessments, will help the Department to reduce the amount of expensive monitoring that would otherwise be required under the Directive. This is wholly consistent with the current thinking and practice in many parts of the world, and with World Health Organisation (WHO) guidance<sup>1</sup>, where it is recognised that risk assessment and risk management is the best way to ensure the quality of water supplies from catchment through to consumers' taps, rather than relying solely on extensive monitoring for long lists of parameters.

### **Liaison between UK administrations**

1.25 The Department and its counterparts in England, Scotland, and Wales seek to achieve a broadly consistent approach to policy and to the content of the Regulations across the United Kingdom. The Drinking Water Inspectorate (DWI), a part of the NI Environment Agency within DOE, and the policy team in the Department, have collaborated with their counterparts in Great Britain to prepare the proposed Regulations and associated technical guidance. This guidance, entitled "Private Water Supplies Technical Manual" is available online<sup>2</sup>.

1.26 Similar Private Water Supplies Regulations are due to come into force in England and Wales before the end of 2009. In Scotland, Regulations to implement the Directive have been in force since July 2006.

1.27 The Technical Manual is useful to those who are responsible for assessment and treatment of private supplies and anyone who may be called upon to give advice. It will also help others with an interest in private supplies, for example by explaining what may be involved in certain procedures required under the Regulations, in particular how to approach and carry out a risk assessment. The site also provides a number of risk assessment templates and case studies.

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<sup>1</sup> [http://www.who.int/water\\_sanitation\\_health/en/](http://www.who.int/water_sanitation_health/en/)

<sup>2</sup> [http://www.privatewatersupplies.gov.uk/private\\_water/22.html](http://www.privatewatersupplies.gov.uk/private_water/22.html)

## **Section 2 Chapters**

The following chapters provide more detail about the contents of the proposed Regulations, and include some specific consultation questions on which views are sought. However, you may have other issues which you wish to raise, and the Department welcomes views or comments on any part of the proposed Regulations during this consultation stage. The corresponding part of the proposed draft Regulations is included in brackets after each heading, for reference.

### **2.1 Exemptions (regulation 4)**

2.1.1 Member States may exempt from the provisions of their national law an individual drinking water supply that provides less than 10 m<sup>3</sup> per day on average or serves fewer than 50 persons, unless the water is supplied as part of a commercial or public activity. Where a Member State has recourse to this exemption, it must ensure that users of the supply are informed that the supply is not regulated and are given advice on any action they should take to protect their health. The Department proposes to exempt single private dwellings and will only offer advice to the owners and users of such supplies, in accordance with the Directive. (This is detailed in draft regulation 11). It is proposed to include a discretionary power within the Regulations (draft regulation 10) to monitor 18 small shared domestic supplies (i.e. those domestic supplies which serve more than one dwelling) within the scope of the Regulations. More detail is provided later in this paper.

2.1.2 The Directive does not apply to natural mineral waters. These waters are regulated by the Natural Mineral Water, Spring water and Bottled Drinking Water (Northern Ireland) Regulations 2007. Furthermore, because the requirements of the 1998 Directive are transposed by these Regulations in respect of spring water and bottled drinking water, all three types of water are exempt from the proposed Regulations. However, this exemption only covers the volume of water which is actually bottled. There are potential situations where water in a bottling plant is used for a range of tasks, including cleaning, wash-down and for the supply of potable drinking water throughout the factory at sanitary stations and catering facilities. In this case, bottled water suppliers which use their private water supply for the aforementioned tasks would be monitored under the proposed Private Water Supplies Regulations in respect of the volume of water used for these activities.

2.1.3 Waters that are medicinal products or water that is used solely for washing a crop after it has been harvested are also exempt from the proposed Regulations.

**Consultation Question 1: Do you agree with the proposed exemptions from the Private Water Supplies Regulations?**

### **2.2 Wholesomeness (regulation 5 & schedule 1)**

2.2.1 The current Regulations transpose the requirements of the previous Drinking Water Directive, which referred to concentrations of parameters that the Member State had to monitor in water supplies. The Member State had to take the steps necessary to ensure that water intended for human consumption at least met those requirements.

2.2.2 The new Directive requires Member States to ensure that drinking water supplies are wholesome and clean and it also defines these terms by reference to quality standards and other requirements (Articles 4 and 5, and Annex I of the Directive). Water that is not wholesome could constitute a risk to human health.

2.2.3 The World Health Organisation guideline values of which the Directive takes account represent the concentration of a parameter that does not result in any significant risk to the health of a consumer, usually over a lifetime of consumption. Where scientific research demonstrated that it was necessary, some new parameters were added to the Directive, but the overall total of parameters was reduced from 62 to 48 to include only those considered essential at the level of the European Union to ensure a continued high level of health protection.

2.2.4 As well as referring to the quality standards set down in the Directive, schedule 1 of the proposed Regulations also refers to some “national requirements.” This is because the Directive instructs that Member States set values for additional parameters where the protection of human health within its territory so requires.

2.2.5 The Water Supply (Water Quality) Regulations (Northern Ireland) 2007 already include national standards for certain parameters because in public supplies they are a risk to human health when regularly present at concentrations consistently above the standards. The proposed Private Water Supplies Regulations therefore also include the same national parameters because it is the Department’s policy that consumers of private supplies, or of food and drink prepared from private supplies, are entitled to the same degree of health protection as consumers of public supplies.

**Consultation Question 2: Do you agree with the parameters included in the definition of wholesomeness, in particular with the inclusion of “national parameters”?**

### **2.3 New Installations (regulation 6)**

2.3.1 Under the current Regulations, there is no requirement in respect of substances or products used for private water supplies. Article 10 of the Directive requires that no substances or materials for new installations used in the preparation or distribution of drinking water, or impurities associated with such substances, or materials for new installations remain in the water in concentrations higher than is necessary for the purpose of their use and do not, either directly or indirectly, reduce the health protection provided for in the Directive.

2.3.2 All substances and materials used by statutory water undertakers in the treatment and distribution of public water supplies have to satisfy the requirements of regulation 30 of the 2007 Public Water Supply Regulations. The requirements specify that substances and products used must conform to appropriate European harmonised standard or European technical approval, or appropriate British Standard providing an equivalent level of protection and performance in accordance with Council Directive 89/106/EEC on the approximation of laws, regulations and administrative provision of the Member States relating to construction products.<sup>1</sup> A list of approved products is posted on the Drinking Water Inspectorate UK website, and is revised on a regular basis.<sup>2</sup>

2.3.3 The Department considers that new private water supplies should be constructed with substances and materials that do not adversely impact water quality. Consequently, the proposed Regulations include a requirement that only substances and products that conform to appropriate European standards are used for new installations. The DWI UK approved list provides details on some such products which may be used in private water supplies but it should be noted that this list is directed mainly towards products used within the public water supply. Generally, any products used for new installations for the preparation and distribution of private supplies to premises should conform to the specification given within regulation 30 of the 2007 Public Water Supply Regulations.

**Consultation Question 3: Do you agree that for new installations for the preparation and distribution of private supplies, only substances and products which conform to the specification within regulation 30 of the Water Supply (Water Quality) Regulations (Northern Ireland) 2007 for the purposes of public water supplies may be used?**

#### **2.4 Risk Assessments (regulation 7 & schedule 2)**

2.4.1 The World Health Organisation (WHO) in its latest Guidelines for Drinking Water Quality (3<sup>rd</sup> edition, published in 2004<sup>3</sup>), recommends that the most effective means of consistently ensuring the safety of a drinking water supply is through the use of a comprehensive risk assessment and risk management approach. The WHO calls this proactive approach a “water safety plan”. The water safety plan framework consists of four elements (catchment, treatment, distribution, buildings) and is being adopted by Governments in many parts of the world. The Water Safety Plan approach has been adopted in the corresponding 2007 Regulations for public water supplies in Northern Ireland, and the recent amendment to these Regulations widens the scope of risk assessment.

2.4.2 This proactive approach moves away from monitoring supplies, by rote, for a long list of parameters to the control and monitoring of supplies for parameters only where there is an identified risk that those parameters are present. The Department may adopt the same approach on a reduced scale to carry out risk

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<sup>1</sup> O.J. No. L40, 11.2.89, p.12

<sup>2</sup> <http://www.dwi.gov.uk/31/approvedproducts/soslist.shtm>

<sup>3</sup> Guidelines for Drinking Water Quality, Third Edition, Volume 1, Recommendations, World Health Organisation, Geneva, 2004

assessments of private supplies, encompassing all steps in the water supply chain from catchment through collection, treatment and distribution to consumers' taps.

2.4.3 The primary objectives of this approach are to minimise the contamination of source water, to reduce or remove contaminants by treatment, and to prevent contamination during storage and distribution to consumers' taps.

2.4.4 The Directive does not include any specific requirement for Member States to carry out and have regard to the findings of a water safety plan/risk assessment. However, the Department considers that the use of risk assessments will not only assist it to fulfil functions and to discharge duties conferred on it under the proposed Regulations but will, over time, also where appropriate allow for a reduction in the extensive list of parameters to be monitored under the Regulations. Identifying potential risks will also enable owners and managers of private supplies to take steps to prevent or minimise the risk of those supplies becoming contaminated.

2.4.5 The Department will also be able to refer to risk assessments when providing general advice to local owners and occupiers about remedial measures that they may take to improve the quality of their private water supply. This advice would also take into account known local variations in the condition of the soil and geology, and factors such as farming or other land uses that may affect both ground and surface water sources.

2.4.6 The Private Water Supplies Technical Manual provides comprehensive guidance on how to carry out risk assessments and the factors to take into account in respect of each part of the water supply chain.

2.4.7 Regulation 7 proposes that the Department will put in place risk assessments at each private water supply to which the Regulations apply (except for supplies to single private dwellings) within eighteen months of the coming into operation of the Regulations, and subsequently every five years. This regulation also proposes that the Department will have only a discretionary power to carry out risk assessments on small domestic supplies which serve more than one dwelling, if it is considered appropriate to do so. The proposed requirements for risk assessments are detailed in schedule 2.

#### **Consultation Questions 4 & 5:**

**Do you agree that the Department should put in place risk assessments of private supplies to assist it in carrying out its duties under the proposed Regulations?**

**Do you agree that the Department should put in place risk assessments of each supply within eighteen months of the coming into operation of the Regulations?**

#### **2.5 Monitoring (regulation 8 & 9 and schedule 3)**

2.5.1 The current procedure for monitoring (including frequency of sampling and parameters analysed) is dependent on whether a private water supply is classified as a category 1 or category 2 supply under the current Regulations. As stated above, a category 1 supply is used solely for domestic purposes, whereas a category 2 supply is used to make food or drink that is sold, or is used in for example hotels or guest houses. Within each category the class of supply depends on the number of persons served or the volume of water used.

2.5.2 In terms of the proposed Regulations, the Directive sets out detailed requirements for sampling and analysis (monitoring). Part 2 of the proposed Regulations and schedules 3 (Monitoring) and 4 (Sampling and analysis) transpose the requirements of Articles 6 and 7 of, and Annexes II and III to the Directive. The provisions concerned with monitoring are explained below.

2.5.3 The monitoring programme for commercial supplies is in accordance with schedule 3. Parts 1 and 2 of this schedule specify the minimum annual sampling frequencies, by volume m<sup>3</sup>/day, for “check” monitoring and “audit” monitoring respectively. This monitoring programme also applies to large shared domestic supplies (i.e. which supply more than 10m<sup>3</sup> of water a day or serve more than 50 persons). There are currently no such supplies in Northern Ireland – any shared private supplies to dwellings are smaller than this specification.

#### *Check Monitoring*

2.5.4 Check Monitoring must be carried out at least once a year to confirm that the water in a supply is wholesome. Some parameters will only be monitored in certain circumstances (aluminium, clostridium perfringens (including spores), iron, manganese, nitrate, nitrite, and disinfection residual) but the suite of parameters under check monitoring (which also includes ammonium, coliform bacteria, colour, conductivity, *E.coli*, hydrogen ion (pH value), odour, taste and turbidity) cannot be reduced even if compliance is met.

2.5.5 The Directive sets the minimum check monitoring frequencies for supplies of more than 100m<sup>3</sup> per day. However it leaves Member States to decide the frequencies for supplies equal to or less than 100m<sup>3</sup>/day (see Annex II, Table B1, Notes 4 and 6 of the Directive). The Department considers it appropriate that commercial supplies which provide between 10m<sup>3</sup> per day and 100m<sup>3</sup> per day should be monitored twice annually and those which provide less than 10m<sup>3</sup> per day should be monitored once every year.

2.5.6 Although the suite of parameters under check monitoring cannot be reduced, the frequency of sampling for a parameter may be reduced under certain circumstances in line with the Directive. The Department may also set a higher sampling frequency for any parameter, if it considers it appropriate, after taking into account the findings of a risk assessment.

#### *Audit Monitoring*

2.5.7 Audit Monitoring provides further detail about the quality of a water supply. Parameters from audit monitoring may be excluded, according to the Directive, if

it can be established that a parameter is not likely to be present in a given supply in concentrations which could lead to the risk of a breach of the relevant parametric value. The Directive does not specify how Member States should reach that decision. Hence paragraph 3(2) of Schedule 3 to the proposed Regulations gives the Department power to exclude a parameter from the audit monitoring of a particular supply, taking into account the findings of a risk assessment.

2.5.8 The Directive specifies a minimum frequency for audit monitoring of once per year for supplies of between 100m<sup>3</sup> per day and 1000m<sup>3</sup> per day plus one extra annual sample for each 3,300m<sup>3</sup> per day provided for supplies of between 1,000 and 10,000m<sup>3</sup> per day. The Directive leaves Member States to decide the frequencies for supplies of <100m<sup>3</sup> per day. It is proposed that supplies of below this volume will be monitored annually.

2.5.9 It is proposed that the Department may set a higher frequency for any parameter if it considers it appropriate taking into account the findings of any risk assessment.

#### **Consultation Questions 6 & 7:**

**Do you agree with the minimum check and audit monitoring frequencies?**

**Do you agree that the Department should take into account the findings of risk assessments when deciding whether to exclude parameters from audit monitoring?**

#### **2.6 Small Shared Domestic Supplies (regulation 10)**

2.6.1 There is a discretionary exemption in Article 3.2(b) of the Directive in relation to small supplies of less than 10m<sup>3</sup>/day (or serving fewer than 50 people) that are used in dwellings solely for domestic purposes and not as part of any commercial or public activity. The Department proposes to take advantage of this exemption in respect of supplies to single private dwellings. There are currently 18 small shared domestic supplies in Northern Ireland i.e. serving more than one dwelling. These supplies are monitored for a small suite of bacteriological parameters once every year and for a full suite of chemical and bacteriological parameters every five years, under the current Regulations.

2.6.2 Under the proposed Regulations, it is not intended to continue with mandatory testing of these small shared supplies, and to apply the available exemption under the Directive. It is proposed to ensure the quality of water in the case of small shared private supplies through monitoring and testing by the Department where deemed appropriate. In such cases, these small shared supplies would be monitored on a decreased suite of parameters (conductivity, enterococci, E. coli, hydrogen ion and turbidity) and may also be monitored in accordance with a risk assessment.

2.6.3 The frequency of monitoring and range of parameters to be monitored may be higher if informed by the results of a risk assessment, or if additional

monitoring is required on a case by case basis where the Department considers that the supply is a risk to human health.

**Consultation Question 8: Are you content that rather than engaging in mandatory testing of small shared domestic supplies, the Department may carry out monitoring and testing where deemed appropriate?**

## **2.7 Supplies to single private dwellings (regulation 11)**

2.7.1 Domestic supplies to single private dwellings are exempt from the current Regulations and, as such, the Department does not register these supplies or have a monitoring programme in place for them. The Department does however provide advice for owners and users of such supplies, including information leaflets and advice on the DWI Website<sup>1</sup>.

2.7.2 As has been stated, Member States may continue to exempt from the provisions of their national law an individual drinking water supply that provides less than 10m<sup>3</sup> per day on average or serves fewer than 50 persons, unless the water is supplied as part of a commercial or public activity. The Directive also states that Member States shall ensure that the population concerned is informed of this and of any action that can be taken to protect human health from the adverse effects resulting from any contamination of water intended for human consumption. In addition, when a potential danger to human health arising out of the quality of water is apparent, the population concerned should promptly be given appropriate advice.

2.7.3 The Department proposes to take recourse to the exemption in respect of supplies to single private dwellings. However, as per the Directive, regulation 11 proposes that the Department shall offer appropriate advice to the owner or occupier of a single private dwelling which has a private water supply.

**Consultation Question 9: Are you content with the approach proposed in respect of private supplies to single private dwellings?**

## **2.8 Sampling and Analysis (regulation 12 & Schedule 4)**

2.8.1 Article 6.1 (Point of compliance) and Article 7 (Monitoring) of the Directive along with the provisions of Annex III set out requirements for taking and analysing samples. Regulation 12 of the proposed regulations identifies the points of compliance (sampling points) where the Department must take samples from private supplies, and schedule 4 (Sampling and analysis) sets out detailed requirements for taking and analysing samples to determine whether the supplies are wholesome.

2.8.2 In accordance with the Directive, schedule 4 of the proposed Regulations consists of general requirements for taking and analysing samples to ensure that they are representative. It depicts methods which should be used to analyse certain parameters but allows for authorisation of alternative methods of analysis

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<sup>1</sup> [http://www.ni-environment.gov.uk/water/drinkwater/private\\_water.htm](http://www.ni-environment.gov.uk/water/drinkwater/private_water.htm)

if it can be demonstrated that those methods are at least as reliable as the methods prescribed.

2.8.3 Some of the requirements in schedule 4 are more stringent than those specified in the Directive. This is because they are accepted good practice and have been included in the 2007 Public Water Supply Regulations. For example, the Department is required to ensure that each sample is representative of the quality of the water at the sampling point when the sample is taken and must also ensure that samples do not become contaminated and that they are kept at a temperature and in conditions that ensure there is no material alteration in the concentration or value of a parameter.

2.8.4 As specified in the Directive, the Department must ensure that any laboratory used has a system of analytical quality control that is subject from time to time to checking by a person who is not under the control of the laboratory and who is approved by the Department for that purpose.

**Consultation Question 10: Do the proposed requirements for sampling and analysis seem appropriate?**

**2.9 Maintenance of Records: (regulation 13 and schedule 5)**

2.9.1 DWI presently holds a register of private water supplies which fall within the current private water supplies Regulations. This includes information on the size, nature and use of supplies which is obtained through a registration form that owners or users are asked to complete<sup>1</sup>.

2.9.2 Whilst there are no specific details regarding maintenance of records in the Directive, the Water and Sewerage Services (Northern Ireland) Order 2006 (Article 118) states that the Department shall maintain a register of private supplies. The Department shall also prescribe the particulars to be recorded. Regulation 13 and schedule 5 of the proposed Regulations require the Department to keep, review and update records in respect of all monitored private supplies in its area. Schedule 5 sets out the information that the records must include, by when the Department must compile them, and for how long it must retain them.

2.9.3 The Department proposes that the records include details regarding the location, description, use and size of each supply. Details of the monitoring programme, any risk assessment carried out and information on investigations into the supply are also proposed to be kept.

2.9.4 The Department intends that information that will assist with epidemiological studies on quality of private supplies and health will be held for 30 years and other information for 10 years. The Department will be required to review and up-date their records at least once each year.

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<sup>1</sup> [http://www.ni-environment.gov.uk/new\\_pws\\_registration\\_form.pdf](http://www.ni-environment.gov.uk/new_pws_registration_form.pdf)

## **Consultation Question 11: Are the requirements for the information that the Department should include in their record of private supplies satisfactory?**

### **2.10 Publication of Information (regulation 14)**

2.10.1 The Drinking Water Inspectorate within the Department currently publishes an annual report containing an overview of drinking water quality in Northern Ireland. This includes details about private drinking water supplies. The current and previous drinking water quality reports are available on their Website<sup>1</sup>.

2.10.2 The Directive instructs that Member States shall take the measures necessary to ensure that adequate and up-to-date information on the quality of drinking water is available to consumers.

2.10.3 Regulation 14 proposes that the Department continue to produce annual reports about private water supplies, including the number of private supplies and other information (which will take the form of information about the water quality of such supplies).

### **Action in the Event of failure**

The Directive sets a specific framework for investigation and remedial action when there is a failure to meet the drinking water standards that apply. This includes immediate investigation and possible remedial action including derogations, improvement notices and restriction notices. This is explained in more detail below.

### **2.11 Provision of information (regulation 15)**

2.11.1 The Department may discover that a private supply is unwholesome during routine sampling, or it may have other reasons to believe that a private supply might be unwholesome, for example, where it has information that there has been a contamination event in the catchment, or a failure of treatment, or ingress during distribution. Regulation 15 proposes general requirements for the Department to carry out whenever it has reason to believe that a private supply is a risk to human health. These include informing those affected and giving advice to minimise any risk. In accordance with the Water and Sewerage Services (Northern Ireland) Order 2006, the Department also proposes to notify the district council for the district, and the Health and Social Care Board for Northern Ireland.

### **2.12 Investigation (regulation 16)**

2.12.1 Article 8 of the Directive specifies actions that Member States must take when drinking water fails to meet a standard of wholesomeness or an indicator parameter value or specification. Member States must ensure that there is an immediate investigation to determine the cause of the failure.

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<sup>1</sup> [http://www.ni-environment.gov.uk/water-home/drinkwater/annual\\_reports.htm](http://www.ni-environment.gov.uk/water-home/drinkwater/annual_reports.htm)

2.12.2 Regulation 16 requires the Department to immediately investigate when a sample taken from any private supply fails to meet a standard of wholesomeness or when an indicator parameter value exceeds the limits set. The Department, where appropriate will consult with the relevant District Council and health authorities, in considering whether any failure of parameter poses a risk to human health.

### **2.13 Failure due to domestic distribution system (regulation 17)**

2.13.1 Article 6.2 of the Directive provides that Member States are deemed to have met their obligations under the Directive “where it can be established that non-compliance with the parametric values set in accordance with Article 5 of the Directive is due to the domestic distribution system or its maintenance thereof”. However, Article 6.2 also states that this proviso does not apply to water that is supplied to the public in premises and establishments such as schools, hospitals and restaurants -- public premises. As a consequence Member States must take remedial action to restore the quality of water in such premises.

2.13.2 Although Member States do not have to enforce the standards where a failure is due to the domestic distribution system in non-public premises, they must ensure that property owners are advised of any remedial action that they can take and other measures that can be taken such as appropriate treatment techniques.

2.13.3 These requirements are prescribed in regulation 17, which also gives the Department discretion to serve an improvement notice in these circumstances if it is necessary, for example if the problem cannot be solved informally and there is a wider risk to human health.

### **2.14 Authorisations (regulations 17 & 18)**

2.14.1 Article 9 of the Directive permits Member States to grant temporary derogations, in the form of authorisations, from the chemical (non-microbiological) parameter values in Annex 1, Part B, whilst remedial action is taken. Article 9 only permits an authorisation if it is not a risk to human health and a supply of water cannot otherwise be maintained by any other reasonable means. An authorisation has to specify the grounds on which it is sought, the parameter that has failed and its maximum value permitted under the authorisation, details of the supply, a monitoring scheme, a remedial action plan and the duration. The authorisation must be limited to as short a period of time as possible and must not exceed three years.

2.14.2 Where any authorisation is granted Article 9 requires the Member State to ensure that the population affected is informed of the authorisation and its conditions, and that, where necessary, advice is given to particular population groups for which it may present a special risk. Member States are required to inform the European Commission of any non-trivial authorisations for a supply exceeding 1000m<sup>3</sup>/day.

2.14.3 Regulations 17 and 18 of the proposed regulations enable the Department to negotiate with the responsible person of the private supply to attempt to solve a problem informally. If the informal approach does not succeed, in accordance with the Directive, the Department may grant an authorisation for a derogated standard under the Regulations on application by the responsible person.

2.14.4 In accordance with Article 9 of the Directive, the Department may only grant an authorisation for a derogation of the standard for a non-microbiological (chemical) parameter in Table B of Schedule 1, including the national standards and Part II of Table B for some parameters that are generally shown as indicator parameters in Part C of Annex I to the Directive. The Department will also consult with all those who will be affected by the authorisation, and where necessary with the relevant District Council and health authorities.

2.14.5 Article 9.4 of the Directive allows Member States to introduce a simpler derogation procedure when a failure to comply with a chemical parameter value is judged to be trivial and that less than 30 days is sufficient time to take the action needed to remedy the problem. This 'trivial failure' procedure requires a derogation to specify only the maximum permissible value and the time required to complete the remedial action.

2.14.6 However, the procedure is not available if the failure to comply with any one parametric value has occurred on more than 30 days on aggregate during the previous 12 months. The Department takes the view that it would not be able to follow this procedure without frequent sampling and that it would be both impracticable to operate and an inappropriate use of resources.

2.14.7 Therefore, the Department does not propose to include any provisions to grant authorisations for trivial failures. Instead, regulation 17 gives the Department the opportunity to try to solve a problem informally by negotiation. This is particularly appropriate when the problem is a failure of a chemical parameter value that is not a risk to human health and can be remedied within 30 days. But if the authority cannot solve the problem informally and it considers that it would be appropriate to grant an authorisation, it may do so in accordance with the procedures set out above.

## **2.15 Improvement Notices (regulation 17 & 19)**

2.15.1 Article 8 of the Directive states that if drinking water fails to meet a standard of wholesomeness or an indicator parameter value or specification (and if this is not due to a domestic distribution system in non-public premises as above), the Member State must ensure that the necessary remedial action is taken as soon as possible to restore the quality of the water and that priority should be given to enforcement action where necessary. The corresponding remedial action in the proposed Regulations is referred to as an improvement notice.

2.15.2 If the Department cannot solve the problem informally it will be required to take formal remedial action under the proposed new powers. If an authorisation is not an appropriate or available option, the Department must serve an

improvement notice under regulation 19. An improvement notice will specify the grounds for the notice and the steps which should be taken to improve the water quality of the supply. It is an offence to fail to comply with an improvement notice.

## **2.16 Restriction Notices (regulation 20)**

2.16.1 When the Department considers that a private supply is a risk to human health, it must serve a “restriction notice” on one or more of the responsible persons. This new regulatory power to prohibit or restrict use of water from a private supply is required to comply with the requirements of Article 8.3 of the Directive. This Article directs that Member States shall ensure that any supply of drinking water which constitutes a potential danger to human health is prohibited or its use restricted or such other action is taken as is necessary to protect human health. Within the proposed Regulations, it is an offence to fail to comply with a Restriction Notice.

2.16.2 In deciding whether to serve a restriction notice, the Department will, in consultation with the relevant District Council and health authorities, weigh the risk to human health arising from the failure against the risk to human health that would be caused if the water supply were interrupted or its use restricted.

2.16.3 Regulation 15 also requires the Department to take steps to inform all the consumers of the risk and, if possible, the degree of risk, and give them advice to allow them to minimise the risk.

## **2.17 Change in persons (regulation 21)**

2.17.1 Regulation 21 of the proposed Regulations applies when there is a change in ownership of the land, or the supply, or the premises. Any requirement that is imposed on a person or premises by an authorisation, an improvement notice or a restriction notice and that is expressed to bind premises in relation to a particular person is also binding on that person's successors and is registered as a statutory charge.

## **2.18 Appeals (regulations 22 & 23)**

2.18.1 Regulations 22 and 23 prescribe details for appeal by any person who is aggrieved by a notice under the proposed Regulations. Under draft regulation 22, any person who is aggrieved by an improvement notice or a restriction notice may appeal to the Appeals Commission within 28 days of the serving of the notice. Regulation 23 stipulates that the Appeals Commission has the power to either cancel the notice, or confirm it with or without modification.

**Consultation Question 12: Do you agree with the proposals for investigation and remedial action when there is a failure to meet the drinking water standards? In particular:**

- **Do you agree that the Department should negotiate with owners in an attempt to solve problems informally, and if that does not work that they**

**should grant authorisations, or serve improvement notices or restriction notices, as appropriate?**

- **Do you agree that it is unnecessary for the Department to have specific powers to grant authorisations for less than 30 days for trivial failures of chemical parameter values?**
- **Do you agree that any person aggrieved by an improvement notice or a restriction notice should be able to appeal to the Water Appeals Commission against the notice?**

## **Enforcement**

Regulations 24 – 26 detail further powers to enable the Department to fulfil their functions and discharge their duties under the proposed Regulations. These include provisions to enter premises and obtain information. Each proposed regulation is detailed below.

### **2.19 Power to enter premises (regulation 24)**

2.19.1 Regulation 24 gives the Department the power to authorise a person in writing for the purposes of the Regulations to enter any premises at all reasonable hours. The authorised person may take with him or her other persons including a constable and any necessary equipment and materials. In an emergency the authorised person may enter at any time and may use reasonable force if necessary. If the sole use of premises is as a private dwelling, the Department must give the occupier 24 hours notice. An authorised person must leave unoccupied premises effectively secured after entry.

### **2.20 Powers of authorised persons (regulation 25)**

2.20.1 Regulation 25 provides that when an authorised person has entered premises, the person may take samples, take photographs, make recordings, and carry out inspections, surveys and tests. He or she may also carry out experimental borings or other works and take and analyse such samples of water, land, articles, documents or records as is considered necessary.

### **2.21 Provision of information (regulation 26)**

2.21.1 Regulation 26 gives the Department a power to serve a notice on any person requiring him or her to supply information that the Department may reasonably require for the purposes of the proposed Regulations.

**Consultation Question 13: Do the powers of enforcement detailed in draft regulations 24 to 26 seem appropriate?**

### **2.22 Obstruction (regulation 27)**

2.22.1 It is necessary that the Department is able to carry out its functions and duties without obstruction and to obtain information to enable it to carry out its

functions. Regulation 27 makes it an offence for a person to intentionally obstruct any person acting in the execution of the Regulations. It is also an offence if a person fails, without reasonable cause, to give assistance or information that is reasonably required, gives information that he or she knows to be false or misleading, or fails to produce a record, when required, to a person acting in the execution of the Regulations.

## **2.23 Penalties (regulation 28)**

2.23.1 Regulation 31 sets out the maximum penalties that will apply if a person is found guilty of an offence under the proposed Regulations. These are, on summary conviction, a fine not exceeding the statutory maximum (currently £5000) or a term of imprisonment not exceeding three months or both a fine and imprisonment; and on conviction on indictment, a fine or imprisonment for a term not exceeding two years, or both a fine and imprisonment.

2.23.2 Where an offence has been committed by a body corporate, this also means that any person who at the time was a director, general manager, secretary or other similar officer of that body or was purporting to act in any such capacity shall also be liable.

### **Section 3**

#### **Issues for Consultation**

**As stated above, the consultation questions included in this paper are not meant to be exhaustive; the Department welcomes views or comments on any part of the proposed Regulations during this consultation stage.**

#### Summary of consultation questions:

1. Do you agree with the proposed exemptions from the Private Water Supplies Regulations?
2. Do you agree with the parameters included in the definition of wholesomeness, in particular with the inclusion of “national parameters”?
3. Do you agree that for new installations for the preparation and distribution of private supplies, only substances and products which conform to the specification within regulation 30 of the Water Supply (Water Quality) Regulations (Northern Ireland) 2007 for the purposes of public water supplies may be used?
4. Do you agree that the Department should put in place risk assessments of private supplies to assist it in carrying out its duties under the proposed Regulations?
5. Do you agree that the Department should put in place risk assessments of each supply within eighteen months of the coming into operation of the Regulations?
6. Do you agree with the minimum check and audit monitoring frequencies?
7. Do you agree that the Department should take into account the findings of risk assessments when deciding whether to exclude parameters from audit monitoring?
8. Are you content that rather than engaging in mandatory testing of small shared domestic supplies, the Department may carry out monitoring and testing where deemed appropriate?
- 9: Are you content with the approach proposed in respect of private supplies to single private dwellings?
10. Do the proposed requirements for sampling and analysis seem appropriate?
11. Are the requirements for the information that the Department should include in their record of private supplies satisfactory?

12. Do you agree with the proposals for investigation and remedial action when there is a failure to meet the drinking water standards? In particular:

- Do you agree that the Department should negotiate with owners in an attempt to solve problems informally, and if that does not work that they should grant authorisations, or serve improvement notices or restriction notices, as appropriate.
- Do you agree that it is unnecessary for the Department to have specific powers to grant authorisations for less than 30 days for trivial failures of chemical parameter values?
- Do you agree that any person aggrieved by an improvement notice or a restriction notice should be able to appeal to the Water Appeals Commission against the notice?

13. Do the powers of enforcement detailed in draft regulations 24 to 26 seem appropriate?

