

# **Investigation and Reporting of a failure in a public building served by a public water supply**

## **1.1 Purpose of this document**

This document provides Guidance on water quality failures attributable to the domestic distribution system or its maintenance, in premises where water is supplied to the public (“public buildings”). This guidance specifically relates to those public buildings where water is supplied by Scottish Water.

An electronic copy of the Guidance document can be found on the website of the Drinking Water Quality Regulator for Scotland at [www.dwqr.org.uk](http://www.dwqr.org.uk).

## **1.2 Background**

The Water Quality (Scotland) Regulations 2010 (“the 2010 Regulations”) put the onus on Local Authorities to investigate failures in a public building that is attributable to the domestic distribution system regardless of whether they are supplied by Scottish Water or a private water supply. The 2010 regulations also required local authorities to report their findings to Scottish Ministers (in practice DWQR).

This regulatory burden still lies with local authorities in relation to public buildings supplied by private water supplies and guidance on this can be found on the DWQR website [www.dwqr.org.uk](http://www.dwqr.org.uk).

However, the Public Water Supplies (Scotland) Regulations 2014 (“the 2014 Regulations”) has amended the 2010 regulations to put the onus of investigation and reporting on Scottish Water. Scottish Water will investigate and report any failure in a public building in accordance with 17 and 19(1)(c) of the 2014 Regulations.

## **2.1 Identification of failures**

It is most likely that water quality failures in public buildings will be identified through: the statutory programme of water quality monitoring undertaken by Scottish Water; investigational samples taken following reports from users of unusual taste or appearance of the drinking water; or through special initiatives a number of local authorities have in place to assess water quality in their buildings e.g. lead pipework surveys. In cases where there is likely to be a failure but it is yet to be confirmed advice may be sought from the DWQR.

Scottish Water includes public buildings as part of the random sampling programme they undertake in order to comply with the requirements of Part 4 the 2014 Regulations.

It is important to ensure that sampling programmes in public buildings which are taken, for example, as part of a facilities management or other contracts, have procedures in place to ensure that water quality failures, including those attributable to the domestic distribution system, are immediately reported to the Environmental Health Department of the relevant local authority and Scottish Water.

## **2.2 Failure attributable to domestic distribution system**

In the case of a public water supply where Scottish Water’s investigation identifies that a failure is attributable to the domestic distribution system or the maintenance of that system, Scottish Water must immediately inform the Scottish Ministers, DWQR and the local authority in whose area the premises is located of the nature of the failure and provide the

responsible person and consumers with details of any immediate steps that in the opinion of Scottish Water it is necessary or desirable to take in the interests of human health.

The notice from Scottish Water should inform consumers in layman's terms of:

- i. the parameter that has failed;
- ii. the concentration or value of that parameter in the sample taken from the consumers' premises;
- iii. the prescribed concentration or value of that parameter (the value set out in the 2001 Regulations);
- iv. the significance of the failure (e.g. if Scottish Water considers that advice on health matters should be sought); and
- v. the reason for the failure (if known).

The notice must also inform consumers of the recommended steps to take in the interests of their health. These steps will depend on the nature of the parameter and the cause and extent of the failure. Examples of the steps that may be considered appropriate are:

- **Failures of microbiological parameters** – advise boiling water for drinking and food preparation pending investigation of the issue.
- **Failures of the lead parameter (or other plumbing metals)** – advise drawing off the water standing in the pipework and potentially using for purposes other than drinking or food preparation.
- **Failure of other parameters** are likely to be caused by ingress to the pipework within the consumer's premises (by permeation, leaking pipes or back siphonage) – advise where necessary boiling water for drinking and food preparation or not to use water for drinking and food preparation.

**It is expected that Scottish Water, in line with current practice, will liaise with the local authority Environmental Health Department and CPHM prior to providing the building owner and/or occupier(s) with details of the immediate steps that Scottish Water recommend be taken in the interests of human health.** Where a potential danger to human health is identified Scottish Water should take immediate remedial action to protect the public supply if necessary (for example immediate installation of backflow prevention to protect the public water supply) followed by notification of actions to other stakeholders. In the case of **relevant water quality issues** supplied by the public water supply, the 2014 Regulations place a duty on both Scottish Water to notify the responsible person and consumers of the details of the failure and steps that should be taken to protect human health. To ensure that consumers are being provided with clear and consistent advice it is vital that liaison occurs between Scottish Water, the local authority Environmental Health Department, the local CPHM and where necessary DWQR prior to any notifications being sent to those affected by the **relevant water quality issue**, however this process should not unduly delay consumer notification. Scottish Water must ensure that at the same time as a copy of any failure communication is sent to the responsible person it forwards a copy of that communication to the Scottish Ministers, DWQR, the appropriate local authority and the local health board.

In accordance with the existing procedures for public water supplies Scottish Water is required to submit electronically an initial event notification to the DWQR, local authority Environmental Health Department and the Consultant in Public Health Medicine (CPHM) for the local health board in which the water quality failure occurs. **Should the failure present**

**an immediate risk to human health immediate contact should be made by telephone to pre-agreed contacts.** Following the initial notification Scottish Water will provide update notifications as necessary and finally an outcome notice once water quality has been restored or the cause of the failure is proved to be the domestic distribution system or the maintenance of that system.

Regulation 19 of the 2014 states that on completion of their investigation they must report their findings to Scottish Ministers, DWQR and the local authority in which the public building is located. Regulation 19 clearly sets out what information should be in the report.

### **3.1 Remedial powers of local authorities where domestic distribution failure affects supply to public**

The 2014 Regulations have not amended local authorities remedial powers. Section 76FB of the 1980 Act requires local authorities to serve a notice on the person who owns or is otherwise responsible for the domestic distribution system of the premises affected by the **relevant water quality issue** (the responsible person) to ensure that the necessary remedial action is taken as soon as possible to restore a wholesome supply of water and protect human health. Unless the **relevant water quality issue** is considered trivial local authorities must take steps to ensure that affected consumers are notified of the remedial action set out in the section 76FB notice.

Neither the Drinking Water Directive nor the resulting Scottish legislation define the term 'trivial'. Local authorities, in relation to their wider public health role, have long taken a risk-based proportionate approach to enforcement and it is expected that this will continue under the 2010 Regulations. Local authorities should continue to exercise their professional judgement to determine whether a **relevant water quality issue** is trivial or whether it is non-trivial and / or poses a risk to human health.

A notice served under section 76FB must:

- give particulars of the **relevant water quality issue** in respect of which the notice is served;
- specify any steps which the local authority require to be taken for the purposes of ensuring a wholesome supply and protecting human health;
- specify a period for the performance of each step;
- specify the advice (if any) which the local authority require the responsible person to communicate to consumers of the supply;
- specify any steps which the local authority require to be taken for the purpose of communicating such advice; and
- specify a period ending not less than 28 days after the day on which the notice is served within which any representations or objections with respect to the notice must be received by the local authority.

Where the local authority considers that the **relevant water quality issue** constitutes a potential risk to human health the local authority must ensure that the steps specified in the section 76FB notice are sufficient to protect human health. When identifying the steps necessary to protect human health the local authority must take account of the health risks resulting from an interruption to the supply or a restriction in the use of water intended for human consumption. As is the current practice it is recommended that local authorities liaise closely with the local health board and where appropriate Health Protection Scotland when

determining the steps required by the section 76FB notice. Where appropriate, consideration should also be given to any Byelaws issues raised by Scottish Water and/or intermediate advice given to consumers by Scottish Water. It should be made clear in the notice that any remedial work undertaken must be completed in accordance with current relevant legislation for example only approved products must be used where required.

A section 76FB notice must require the responsible person to take the steps specified in the notice to ensure that water quality is restored as soon as possible having regard to the potential risk to human health. Failure, without reasonable excuse, to comply with the terms specified in the notice of improvement will be an offence to which the responsible person will be liable, on summary conviction, to a fine not exceeding level 5 of the standard scale.

Under section 76H of the 1980 Act, where any steps specified in a notice served under section 76FB are not complied with within the period specified in that notice, the local authority may decide to carry out that step themselves, and may recover its expenses in so doing from the responsible person.

In the event of a notice being served on a responsible person, the local authority must inform consumers of the remedial action that it has taken and include a copy of any notice served on the building owner/occupier(s). Local authorities are expected to take a pragmatic view as how best to ensure the effective communication of this information to consumers who may use the public building. For example the head-teacher (in the case of a school) or the facilities manager (of a hospital or other public building) may be best placed to ensure that appropriate advice is communicated to potentially affected consumers. Local authorities should work with the building owner/occupier(s) or facilities management representatives to ensure that appropriate steps are taken to make consumers aware of the remedial action taken – for example publication of the notice on a public information board, or in the proximity of the main drinking water facilities.

Depending on the failing parameter(s), and the risk to human health, it may be appropriate to attempt to contact consumers who potentially no longer use the public building or only use it occasionally e.g. parent / toddler groups who have recently stopped using a public building.

Once the necessary remedial actions have been completed the local authority must verify, through water quality sampling, that a wholesome supply of water has been restored. The local authority must then recommend to the Scottish Ministers (in practice the DWQR) that the investigation be closed.

Local authorities are reminded, in relation to **relevant water quality issues** in public buildings as well as the powers in section 76FB of the 1980 Act to serve notice that wide ranging powers and guidance to protect human health are also available through for example the Public Health etc. (Scotland) Act 2008. For further examples of alternative powers and guidance refer to section 1.5 The Legislative Framework.

