

## New private water supply regulations in the pipeline



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The majority of properties in Scotland are supplied by Scottish Water but there are around 150,000 people in Scotland who rely on a private water supply. Many others use them each year on holiday. A private water supply can be from a variety of sources such as wells, boreholes, springs, streams, rivers or lakes as well as storage structures and tanks.

The Water Intended for Human Consumption (Private Supplies) Scotland Regulations are coming into force on 27 October 2017. These regulations will supplement the existing Private Water Supplies (Scotland) Regulations 2006 to further regulate larger water supplies in line with recent EU Directives.

### What is a Private Water Supply?

A private water supply is any water supply not provided by Scottish Water. The existing 2006 regulations splits water supplies into two types. Type A supplies are those which provide:

- 10m<sup>3</sup> of water a day or more;
- water for 50 people or more; or
- supplies that serve or are used as part of a commercial or public activity including food production, hotels, holiday lets, bed and breakfasts, farm shops, restaurants, campsites and village halls

Type B supplies are those which do not fall into one of these three categories and only supply domestic premises. Type A supplies will be affected by the new Regulations. Type B supplies will continue to be regulated by the 2006 Regulations although the Scottish Government plans to update these by way of a separate set of Regulations.

### Who is Responsible?

Under both the new 2017 Regulations, and the existing 2006 Regulations anyone who fulfils the relevant criteria is responsible for the complying with the statutory regulations.

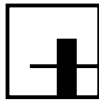
This includes individuals who own any part of the private water supply system, the landowner who owns the land from which the water is extracted, the landowner who owns the land across which any part of the water supply system is built, and any individuals who manage or control any of the land involved, the water supply system and the water supply.

### Obligations on the Person Using

The consumer of the private water supply is not subject to statutory regulation unless the consumer fits the definition of supplier. The use of the supply is usually regulated in a deed or contract with the supplier such as a Deed of Servitude. This deed usually sets out the obligations of the consumer regarding contributions to maintenance and repair of the private water system as well as setting out their rights to use the water. If the private water supply is not located on the consumer's land the deed may include servitude rights to use the water supply and carry out maintenance and repair of the water supply.

### Obligations on the Supplier

Any individual defined under either the 2006 Regulations or the 2017 Regulations as being responsible for the water supply must ensure that the water meets the water quality standards.



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For larger water supplies under the new Regulations, these standards include the concentration of bacteria such as enterococci and e-coli (which as recently as 2015 was flagged as existing at concerning levels within private water supplies), chemical levels and what are known as indicator parameters. Indicator parameters include whether or not the taste, colour and odour would be viewed as being acceptable to consumers or of a normal level, compared to the water from the mains.

For smaller water supplies (Type B supplies governed by the 2006 Regulations), water must be 'wholesome'. This means that a Type B supply must:

- not contain coliform bacteria, enterococci or E.coli;
- have a PH level of between 6.5 and 9.5; and
- meet the requirements for maximum lead and nitrate levels.

There is a general right in common law not to interfere with a servitude right to use a private water supply.

### Obligations on Local Authorities

Under the new Regulations, local authorities will operate a new register of private water supplies and carry out both risk assessments and monitoring as part of an ongoing process to ensure the water supplied through private water supplies meets water quality standards and to assess whether the measures currently in place to control the risks to human health are working effectively.

All private water supplies must have undergone a risk assessment by 1 January 2022.

From 27 October 2017, Local Authorities will be able to recover expenses incurred in collecting and analysing water samples and carrying out and reviewing risk assessments.

Local Authorities will now have significant enforcement powers including, if there is a belief that a failure to comply with the regulations produces a significant risk to public health and that urgent action is required, the ability to enter premises and carry out work they deem necessary, with all expenses being recoverable from the landowner. The quality of private water supplies has been under

scrutiny since the early 2000s where four out of every five private water supplies failed to meet EU drinking standards. Recent surveys in 2014 showed that the impact of the 2006 Regulations had failed to eradicate poor water quality from private water supplies, finding contamination by bacteria and metal in 2,700 samples from Type A water supplies.

### Increased regulation

The new Regulations considerably increase the level of monitoring required for larger water supplies or those with a commercial purpose.

After the commencement date, Local Authorities will be able to recover expenses incurred in collecting and analysing water samples and carrying out and reviewing risk assessments.

Commercial property owners or business operators whose premises are served by a private water supply must now ensure that up to date and adequate information as to the water quality is prominently displayed.

Due to the definition of Type A commercial water supplies this is also likely to apply to holiday lets that are supplied by private water supplies.

### Enforcement

The 2017 Regulations are another step towards an ever more regulated industry in an attempt to encourage Local Authorities to be more involved with private water supplies that fail to meet regulatory standards. The overarching aim is to reduce the health risks associated with poor private water supplies.

The new Regulations are more onerous on Local Authorities in order to ensure that water supplies meet certain requirements. To do so, there are a number of additional powers given to Local Authorities to enforce action against owners of poor water supplies. There are a number of offences created by the Regulations and powers given to Local Authorities to issue specific Notices.

If you have a private water supply and have any questions, please do not hesitate to get in touch with a member of our Rural Property and Business team.



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