



The Scottish Parliament  
Pàrlamaid na h-Alba

## ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE

### AGENDA

25th Meeting, 2017 (Session 5)

Tuesday 3 October 2017

The Committee will meet at 10.00 am in the Robert Burns Room (CR1).

1. **Decision on taking business in private:** The Committee will decide whether to take items 5, 6 and 7 in private.
2. **Scottish Land Commission:** The Committee will take evidence from—  
  
Andrew Thin, Chair, Dr Sally Reynolds, Commissioner, and Hamish Trench, Chief Executive, Scottish Land Commission.
3. **Subordinate legislation:** The Committee will consider the following negative instruments—  
  
Public Water Supplies (Scotland) Amendment Regulations 2017 (SSI 2017/281);  
Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017 (SSI 2017/282)
4. **Petition PE01615:** The Committee will consider correspondence from the Scottish Government in relation to a petition by Logan Steele on behalf of Scottish Raptor Study Group calling on the Scottish Parliament to urge the Scottish Government to implement urgent action to introduce a state regulated system of licensing of game bird hunting.
5. **Scottish Land Commission:** The Committee will consider evidence heard earlier in the meeting.
6. **Land Rights and Responsibilities Statement:** The Committee will consider whether it wishes to take any actions in relation to the Statement, following its recent publication.
7. **Draft Budget Scrutiny 2018-19:** The Committee will consider its approach to scrutiny of the Scottish Government's Draft Budget 2018-19.

**ECCLR/S5/17/25/A**

Lynn Tullis  
Clerk to the Environment, Climate Change and Land Reform Committee  
Room T3.40  
The Scottish Parliament  
Edinburgh  
Tel: 0131 348 5240  
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The papers for this meeting are as follows—

**Agenda Item 2**

Scottish Land Commission cover note

ECCLR/S5/17/25/1

PRIVATE PAPER

ECCLR/S5/17/25/2  
(P)

**Agenda Item 3**

Subordinate Legislation cover note

ECCLR/S5/17/25/3

**Agenda Item 4**

PE1615 State regulated licensing system for gamebird hunting in Scotland cover note

ECCLR/S5/17/25/4

**Agenda Item 6**

PRIVATE PAPER

ECCLR/S5/17/25/5  
(P)

**Agenda Item 7**

PRIVATE PAPER

ECCLR/S5/17/25/6  
(P)

**Environment, Climate Change and Land Reform Committee**

**25th Meeting, 2017 (Session 5)**

**Tuesday 3<sup>rd</sup> October 2017**

**Scottish Land Commission**

**Background**

1. The [Land Reform Act 2016](#) provided for the establishment of a Scottish Land Commission (SLC) to provide direction, leadership and strategic thought to land reform in Scotland. It was formally established on 1 April 2017 and its aim is to:

“...achieve the Scottish Government’s vision of a Scotland where the ownership, management and use of land and buildings contribute to the collective benefit of everybody.”<sup>1</sup>

2. Based in Inverness, the SLC is made up of six Commissioners, including one Tenant Farming Commissioner, and is supported by a team of officials.

**Committee’s previous consideration**

3. While the 2016 Act states the Commissioners are to be appointed by Scottish Ministers, they must also be approved by the Scottish Parliament. In [November 2016](#) the Committee took evidence from the six Scottish Government nominees and recommended in [its subsequent report](#) that the Parliament approves each of their appointments. The Committee also highlighted in its report that it “sees this appointments process as the first step in its wider scrutiny of the Commission’s work.”<sup>2</sup> Specifically, following the SLC’s establishment, the Committee wished to hear from it on:

- the development of its strategic plan;
- the capacity of the Commission in carrying out its functions, both with regard to the Commissioners and its support staff;
- what plans will be in place to ensure a smooth transfer between future post holders;
- the internal systems in place for the ongoing monitoring and management of potential conflicts of interests of Commissioners;
- its structures for seeking the provision of appropriate legal advice and counsel; and

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<sup>1</sup> [www.landcommission.gov.scot](http://www.landcommission.gov.scot)

<sup>2</sup> [The Environment, Climate Change and Land Reform Committees report on the Appointment of the Scottish Land Commissioners and the Tenant Farming Commissioner](#)

- how its work covers the whole of Scotland and takes account of land issues in rural, semi-rural and urban areas.

**Purpose of the session**

4. This session is the first opportunity since the SLC was established for the Committee to hear from the Commission on its work. The evidence session also coincides with the recent publication of the [SLC's first strategic plan](#). Questions from the Committee will likely focus on what is contained in the plan as well as the operation and work of the Commission since April 2017.

**Clerks**

**Environment, Climate Change and Land Reform Committee**

**Environment, Climate Change and Land Reform Committee**

**25<sup>th</sup> Meeting, 2017 (Session 5)**

**Tuesday 3<sup>rd</sup> October 2017**

**SSI cover note**

**[Public Water Supplies \(Scotland\) Amendment Regulations 2017 \(SSI 2017/281\)](#)  
[pages 1 – 9]**

**[Water Intended for Human Consumption \(Private Supplies\) \(Scotland\) Regulations 2017 \(SSI 2017/282\)](#) [pages 10 to 16]**

**Procedure for Negative Instruments**

Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

**SSI 2017/281**

**Title of Instrument:** [Public Water Supplies \(Scotland\) Amendment Regulations 2017](#)

**Type of Instrument:** Negative

**Laid Date:** 7 September 2017

**Circulated to Members:** 8 September 2017

**Meeting Date:** 3 October 2017

**Minister to attend meeting:** No

**Motion for annulment lodged:** No

**Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?** Yes

**Reporting deadline:** 30 October 2017

## **Purpose**

1. The Public Water Supplies (Scotland) Regulations 2014 aim to protect human health from the adverse effects of any contamination of water supplied by Scottish Water for human consumption. These amendment regulations are to reflect a more recent EU Drinking Water Directive which updates monitoring requirements and specifies a more rigorous series of risk assessments for the water supply chain.

## **Background**

2. European Union directives are binding on Members States as to the result to be achieved, but leave them to decide on the method of achieving that result. Directives are transposed into domestic law. Further details on the [EU Legislative Process](#) can be found in the Scottish Parliament Information Centre Briefing of May 2016.

3. The purpose of the regulations is to transpose, and implement in Scots law, [European Commission Directive \(EU\) 2015/1787](#) ("the Amending Directive"). This Directive amends the [Drinking Water Directive](#) (Council Directive 98/83/EC of 3 November 1998) on the quality of water intended for human consumption.

4. The Drinking Water Directive outlines minimum requirements of monitoring of the quality of water intended for human consumption and the Amending Directive provides for flexibility, allowing for less frequent sampling in certain circumstances. According to the Amending Directive, flexibility in this area is advantageous as—

“Experience has shown that, for many (particularly physico-chemical) parameters, the concentrations present would rarely result in any breach of limit values. Monitoring and reporting such parameters without practical relevance imply significant costs, especially where a large number of parameters need to be considered. Introducing flexible monitoring frequencies under such circumstances presents potential cost-saving opportunities that would not damage public health or other benefits. Flexible monitoring also reduces the collection of data that provide little or no information on the quality of the drinking water.”

5. The effect is to allow Members States to—

“derogate from the monitoring programmes they have established, provided credible risk assessments are performed, which may be based on the WHO Guidelines for Drinking Water Quality and should take into account the monitoring carried out under Article 8 of Directive 2000/60/EC”.

6. The instrument also amends and simplifies the regulations which transpose the [Euratom Council Directive](#) (concerned with protections for workers and the public from ionising radiation).

7. A copy of the Scottish Government's Explanatory and Notes are included in **Annexe A**. The Business

**Delegated Powers and Law Reform Committee**

8. At its meeting on 26 September 2017, the Committee agreed to draw the attention of Parliament to the instrument and to report the instrument under reporting ground (i) as the drafting appears to be defective.

9. The extract from the report can be found in **Annexe B**.



## Scottish Government Explanatory Note

As per purpose above and including:

These Regulations amend the Public Water Supplies (Scotland) Regulations 2014(a) (“the 2014 Regulations”) pursuant to the further implementation of—

- Council Directive 98/83/EC on the quality of water intended for human consumption(b) including, in particular, the amendments made by Commission Directive (EU) 2015/1787 amending Annexes II and III to Council Directive 98/83/EC on the quality of water intended for human consumption(c); and
- Council Directive 2013/51/EURATOM laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption(d).

In particular, these Regulations amend the 2014 Regulations as follows—

- regulation 2 amends Part 1 (general);
- regulation 3 amends Part 3 (wholesomeness of public water supplies);
- regulation 4 amends Part 4 (monitoring of public water supplies);
- regulation 5 amends Part 8 (treatment, risk assessment and contamination from pipes);
- regulation 6 amends Part 14 (local authority functions: public water supplies);
- regulation 7 inserts a new schedule 1A (monitoring: minimum requirements);
- regulation 8 amends schedule 2 (monitoring);
- regulation 10 substitutes a new schedule 3 (methods of analysis);
- regulations 9 and 11 omit schedules 2A and 3A as these are no longer needed; and
- regulations 12 makes consequential revocations.

The 2014 Regulations as amended, except where they state otherwise, apply only in relation to—

- water introduced into, or supplied through or from, the public water supply system;
- water supplied by Scottish Water by any other means; and
- water supplied with the help of services provided by Scottish Water.

A business and regulatory impact assessment has been prepared for these Regulations.

## Scottish Government Policy Note

These Regulations (“the Regulations”) are made in exercise of the powers conferred by sections 76B, 76F(5) and (6), 76J, 101(1) and (1A) and 109(1) of the Water (Scotland) Act 1980 and section 2(2) of the European Communities Act 1972. The Regulations are subject to the negative procedure.

## Policy objectives

The main purpose of the Regulations is to amend the Public Water Supplies (Scotland) Regulations 2014 (“the principal Regulations”) to make fresh and supplementary provision to transpose and implement, for Scotland, Commission Directive (EU) 2015/1787 (“the Amending Directive”)<sup>(1)</sup>.

The principal Regulations aim to protect human health from the adverse effects of any contamination of water supplied by Scottish Water for human consumption purposes by ensuring that it is wholesome. They implement, in respect of public supplies, Council Directive 98/83/EC on the quality of water intended for human consumption (“the Drinking Water Directive”)<sup>(2)</sup> and Council Directive 2013/51/Euratom laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption (“the Euratom Directive”)<sup>(3)</sup>. The Amending Directive amends Annexes II and III to the Drinking Water Directive, which lay down the minimum requirements of the monitoring programmes for water intended for human consumption and the specifications for analysis of different parameters and grant a certain degree of flexibility in monitoring, allowing for less frequent sampling in certain circumstances.

The Regulations also revoke and re-enact (with modifications) some provisions of the principal Regulations which transpose the Euratom Directive. These changes are made to make the principal Regulations more coherent and simpler to follow.

In addition, some consequential and other changes are made to the principal Regulations for clarity or so that the principal Regulations align more closely with requirements of the above Directives. These include new definitions for ‘consumer’s tap’ and ‘point of compliance’.

## Main amendments made to the principal Regulations

Part 4 of the principal Regulations (monitoring of public water supplies) is amended by replacing regulations 5 to 10 with new monitoring provisions that are closely aligned to the requirements of the Drinking Water Directive, as updated by the Amending Directive, and the Euratom Directive. Current provisions in the principal Regulations which require additional monitoring at treatment works, service reservoirs, tankers and new sources are retained. Although the new monitoring provisions would allow some deviation from the default monitoring requirements, each monitoring programme prepared by Scottish Water must be approved by the Drinking Water Quality Regulator for Scotland (DWQRS). Until a new monitoring programme has been approved for a water supply zone, Scottish Water must continue to carry out monitoring in accordance with the previous requirements of the principal Regulations.

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<sup>1</sup> OJ L 260, 7.10.2015, p. 6

<sup>(2)</sup> OJ L 330, 5.12.1998, p. 32, as amended by Regulation (EC) No 1882/2203 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1), Regulation (EC) No 596/2009 of the European Parliament and of the Council (OJ L 188, 18.7.2009, p. 14) and Commission Directive (EU) 2015/1787 (OJ L 260, 7.10.2015, p. 6) and Corrigendum (OJ L 111, 20.4.2011, p.31).

<sup>(3)</sup> OJ L 296, 7.11.2013, p. 12.

Given the Regulations allow a degree of flexibility, as an additional safeguard the Regulations place specific responsibilities on the DWQRS regarding the review and approval of monitoring programmes. In support of this, new Regulation 15A confers a power on the DWQRS to provide guidance or give directions to Scottish Water in relation to the exercise of Scottish Water's functions under Part 4 of the principal Regulations.

The Regulations amend Part 8 of the principal Regulations, which concerns the risk assessment of water supplies. Under the current provisions Scottish Water must assess each treatment works and its connected supply system so as to establish whether or not there is a significant risk of supplying unwholesome water from the combined system (or any part of it). The risk assessments were required to be carried out before 1 October 2015, or for any combined system not being used on 1 January 2015, to be carried out before that system is used. The Regulations adjust these provisions to specify that these risk assessments must establish whether the measures in place to control risks to human health throughout the water supply chain are working effectively and that water at each point of compliance meets the water quality standards. The risk assessment must also be carried out using a methodology approved by the DWQRS. The Regulations require Scottish Water to complete risk assessments which comply with these requirements by 1 October 2018, or where a combined system is not in use on 27 October 2017, before that system is used.

The provisions regarding monitoring frequency are amended. The new Schedule 1A sets minimum monitoring frequencies for "Group A" and "Group B" parameters. "Group A" parameters have a higher frequency and include, for example, E. coli. These frequencies are slightly lower than current requirements, though Scottish Water can only adopt them following the approval of the DWQRS. The new monitoring frequencies are based on the volume of water rather than the population served as is currently the case. Domestic provisions relating to requirements for increased frequency of monitoring for aluminium, iron and manganese when the water source is a surface water are restated.

Following consultation with Food Standards Scotland (FSS), the current provision (contained within the definition of "human consumption purposes") that the DWQRS is responsible for determining whether water affects the wholesomeness of food, and accordingly whether the water quality standards must be complied with, has been amended to reflect that under EU food hygiene regulations some use of non-drinking water in food production is permitted, and domestically competence in relation to food hygiene regulations, and for determining the wholesomeness of foodstuffs, lies with the FSS or, where delegated by the FSS, the relevant local authority.

## **Consultation**

The Regulations make relatively minor adjustments to the monitoring and risk assessment duties placed on Scottish Water by the principal Regulations and will have little, if any, impact on the public as consumers of water supplied by Scottish Water. As the rationale for, and impact of, the Amending Directive was fully set out in the public consultation on the new Regulations on private supplies, a limited

consultation of the key stakeholders on a draft of the Regulations took place from 16 June to 28 July 2017. During the course of the consultation, FSS proposed the further amendment to the principal Regulations noted above. Stakeholders were content with the provisions transposing the Amending Directive.

### **Impact assessment**

A partial Business and Regulatory Impact Assessment (BRIA) was included with the consultation. A full BRIA has since been completed, having regard to the consultation responses. An Equality Impact Assessment (EQIA) and a Child Rights and Wellbeing Impact Assessment (CRWIA) were not carried out as the Regulations are not considered to have any significant impact in relation to these matters.

### **Financial effects**

The Regulations have no impact on businesses other than Scottish Water, and no costs have been identified attributable to transposing the Amending Directive.

Drinking Water Quality Division  
The Scottish Government  
September 2017

## **Annexe B**

### **EXTRACT FROM THE DELEGATED POWERS AND LAW REFORM COMMITTEE'S 39<sup>th</sup> REPORT OF 2017**

[Public Water Supplies \(Scotland\) Amendment Regulations 2017 \(SSI 2017/281\)](#)  
(Environment, Climate Change and Land Reform)

This instrument amends the Public Water Supplies (Scotland) Regulations 2014 to implement provisions of Commission Directive EU 2015/1787 on monitoring requirements for drinking water, and of Council Directive 2013/51/Euratom on radioactive substances in drinking water. The Regulations come into force on 27th October 2017.

In new schedule 1A, to be inserted into those 2014 Regulations, paragraph 4(3) of Part E, on radioactive substances, provides that, where indicative dose requires to be monitored, the frequency of the monitoring must be determined depending on the screening strategy adopted pursuant to Part B of schedule 1A. The Scottish Government has confirmed that the reference to Part B is an error, and that the reference should be to Part F instead.

In Table 1 in Part B of new schedule 3, to be substituted into the 2014 Regulations, in the second column of the table, headed "Uncertainty of measurement", the value given for polycyclic aromatic hydrocarbons is 30. The Scottish Government has confirmed that this is an error, and that the value should be 50.

In Table 2 in Part B of new schedule 3, in the fourth column of the table, headed "Limit of detection", the value given for oxidisability is 25. The Scottish Government has confirmed that this is an error, and that the value should be 10.

The exchange of correspondence with the Scottish Government on these matters is included below.

The Committee agrees to report the instrument to the Parliament under reporting ground (i), as the drafting appears to be defective as outlined in paragraphs 5 to 7 above.

The Committee welcomes the Scottish Government's intention to correct the instrument by making and laying an amending instrument at the earliest opportunity.

### **Public Water Supplies (Scotland) Amendment Regulations 2017 (SSI 2017/281)**

#### **On 14 September 2017, the Scottish Government was asked:**

In new schedule 1A, to be inserted into the 2014 Regulations, paragraph 4(3) of Part E (radioactive substances) provides that, where elevated natural radionuclide levels require indicative dose to be monitored, Scottish Water must determine the frequency of the monitoring required depending on the screening strategy adopted pursuant to Part B of schedule 1A. It appears that Part B sets out various parameters to be monitored by monitoring programmes, but specifically excludes indicative dose. Part F of schedule 1A, however, appears to set out monitoring requirements for indicative dose, including screening strategies for radionuclides. Please confirm whether the reference to Part B of schedule 1A in paragraph 4(3) of Part E of that schedule is correct, or whether the reference should be to Part F instead.

The Policy Note explains that the provisions of the 2014 Regulations as regards monitoring of public water supplies are amended to introduce new monitoring provisions which are closely aligned to the requirements of the Drinking Water Directive as amended by the Amending Directive. Table 1 in Part B of schedule 3, to be substituted into the 2014 Regulations, implements Table 1 in Part B of Annex III of the Drinking Water Directive (as amended by the Amending Directive). Each value in the second column of Table 1 in Part B of new schedule 3, to be inserted into the 2014 Regulations, is identical to the corresponding value in the second column of Table 1 in Part B of Annex III of the Drinking Water Directive (as amended), save for one value. The value for Polycyclic aromatic hydrocarbons is 30 in the Regulations and 50 in the Directive. Please confirm whether this difference in value is intentional, or whether there is some error.

Similarly, every value in the third column of Table 2 in Part B of new schedule 3, to be inserted into the 2014 Regulations, is identical to the corresponding value given in the corresponding Table 2 in the Drinking Water Directive (as amended), save for one value. The value for Oxidisability is 25 in the Regulations and 10 in the Directive. Please confirm whether this difference in value is intentional, or whether there is some error.

In the Notes to Tables 1 and 2, referred to above, Note 8 refers to European Standard EN ISO 8467:1995, entitled "Water quality - Determination of permanganate index (ISO 8467:1993)". The footnote to this Note gives the reference for the European Standard as EN ISO 8467:1995. Is there some error?

In the footnote to Note 2, no ISBN number is given for International Standard ISO 5725, as is the case for all other Standards referred to in the Regulations. Is this intentional, or has the relevant ISBN number been omitted in error from the footnote?

**The Scottish Government responded as follows:**

In relation to the Committee's questions (1)-(3), regrettably the points referred to are errors. The reference to Part B of schedule 1A, in paragraph 4(3) of Part E of that schedule, should be to Part F instead. In the second column of Table 1 in Part B of new schedule 3, the value for polycyclic aromatic hydrocarbons should be 50 (not 30). In the fourth column (headed "limit of detection") of Table 2 in Part B of new schedule 3, the value for oxidisability should be 10 (not 25).

The Scottish Government is grateful to the Committee for bringing these points to its attention, and regrets that these errors have been made. The Scottish Government notes that these points also apply in respect of the Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017 (SSI/2017/282). The two instruments implement Commission Directive (EU) 2015/1787 (amending Annexes II and III to Council Directive 98/83/EC on the quality of water intended for human consumption), which has a transposition deadline of 27 October 2017, the date that both instruments will come into force. The Scottish Government will correct both instruments, by making and laying an amending instrument at the earliest opportunity, to come into force on 27 October 2017. Whilst bringing this amending instrument in force on the 27 October 2017 will regrettably breach the 28 day laying rule, the Scottish Government considers that in these circumstances it is the most appropriate course of action, in order to correctly transpose the Directive by the deadline.

In relation to the Committee's question (4), in the Notes to Tables 1 and 2 in Part B of schedule 3, the Scottish Government confirms that there is no error. The International Organization for Standardization (ISO) published this standard under reference ISO 8467:1993. This standard was approved by the European Committee for Standardization (CEN) under reference "EN ISO 8467:1995". Accordingly, no corrective action is proposed.

In relation to the Committee's question (5), in the Notes to Tables 1 and 2 in Part B of new schedule 3, the relevant ISBN numbers for international standard ISO 5725 were omitted in error from the footnote. Thank you for pointing this out. Whilst the omission is regrettable, the Scottish Government considers that the standard is clearly identified by its title and by the British Standards Institution references contained in the footnote to Note 2. Accordingly, no corrective action is proposed.

**SSI 2017/282**

<b>Title of Instrument:</b>	<a href="#">Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017 (SSI 2017/282)</a>
<b>Type of Instrument:</b>	Negative
<b>Laid Date:</b>	7 September 2017
<b>Circulated to Members:</b>	8 September 2017
<b>Meeting Date:</b>	3 October 2017
<b>Minister to attend meeting:</b>	No
<b>Motion for annulment lodged:</b>	No
<b>Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?</b>	No
<b>Reporting deadline:</b>	30 October 2017

**Purpose**

1. The instrument revokes and replaces provisions of the Private Water Supplies (Scotland) Regulations 2006 (where applicable to a Type A supply) to transpose amendments to the [Drinking Water Directive](#) made by the [European Commission Directive \(EU\) 2015/1787](#) ("the Amending Directive"). The effect of this is, according to the Policy Note, to:

- a. "more closely align the drinking water quality provisions with the provisions of the Drinking Water Directive;
- b. restructure those provisions to make them easier to follow; and
- c. confer additional enforcement powers on local authorities so as to give them the tools they need to ensure water supplied by means of private water supplies meets the water quality standards."

2. A copy of the Scottish Government's Explanatory and Policy Notes are included in **Annexe C**.

**Delegated Powers and Law Reform Committee**

3. At its meeting on 19 September 2017, the Committee considered the following instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

**Clerks**

**Environment, Climate Change and Land Reform Committee**

**SCOTTISH GOVERNMENT EXPLANATORY NOTE**

As per purpose above and including:

Except where stated otherwise, these Regulations do not apply in relation to the categories of water intended for human consumption specified in sub-paragraphs (a) to (h) of regulation 2(1). In particular, these Regulations do not apply in relation to (among other things)—

- water which is regulated by the Public Water Supplies (Scotland) Regulations 2014(a);
- water which is exempt by virtue of regulation 2(4); and
- water which is regulated by specified provisions of the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No. 2) Regulations 2007(b).

These Regulations replace (and partly re-enact with modifications) the provisions of the Private Water Supplies (Scotland) Regulations 2006(c) so far as they applied to a ‘Type A supply’, pursuant to the further implementation of—

- Council Directive 98/83/EC on the quality of water intended for human consumption(d) including, in particular, the amendments made by Commission Directive (EU) 2015/1787 amending Annexes II and III to Council Directive 98/83/EC on the quality of water intended for human consumption(e); and
- Council Directive 2013/51/EURATOM laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption(f).

Except where the contrary intention appears, in so far as a thing done (such as a sample taken or a failure investigated) or having effect as if so done under a provision of the Private Water Supplies (Scotland) Regulations 2006 could have been done under the re-enacted provision (modified or not), that thing has effect as if done under that re-enacted provision(g).

Part 1 makes general provision for citation, commencement, extent, application, interpretation, etc.

Part 2 makes provision in relation to a register of supply systems, etc.

Part 3 makes provision in relation to the risk assessment of water supplies.

Part 4 makes provision in relation to water quality standards and duties.

Part 5 makes provision in relation to monitoring and analysis.

Part 6 makes provision in relation to investigation and remedial action.

Part 7 makes provision in relation to information and reporting.

Part 8 makes provision in relation to enforcement.

Part 9 makes provision in relation to offences.

Part 10 makes provision in relation to other enactments.



## SCOTTISH GOVERNMENT POLICY NOTE

These Regulations (“the Regulations”) are made in exercise of the powers conferred by sections 76F(5) to (8), 76J, 101(1) and (1A) and 109(1) of the Water (Scotland) Act 1980, section 47(2) to (4) of the Local Government in Scotland Act 2003, and section 2(2) of the European Communities Act 1972. The Regulations are subject to the negative procedure.

### Policy objectives

The Regulations aim to protect human health from the adverse effects of any contamination of water intended for human consumption by ensuring that the water meets water quality standards. The main purpose of the Regulations is to revoke and replace (and partly re-enact with modifications) the provisions of the Private Water Supplies (Scotland) Regulations 2006 (“the 2006 Regulations”) so far as they applied to a “Type A supply”, to make fresh and supplementary provisions to transpose and implement for Scotland:

- Council Directive 98/83/EC on the quality of water intended for human consumption<sup>(4)</sup> (“the Drinking Water Directive”), including in particular the amendments made by Commission Directive (EU) 2015/1787 (“the Amending Directive”)<sup>(5)</sup>; and
- Council Directive 2013/51/Euratom laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption<sup>(6)</sup> (“the Euratom Directive”) for private water supplies which are subject to the provisions of the Drinking Water Directive.

The Amending Directive amends Annexes II and III to the Drinking Water Directive and requires to be transposed into domestic legislation by 27 October 2017, which is the date of coming into force of the Regulations.

The opportunity has been taken to -

- more closely align the drinking water quality provisions with the provisions of the Drinking Water Directive;
- restructure those provisions to make them easier to follow; and
- confer additional enforcement powers on local authorities so as to give them the tools they need to ensure water supplied by means of private water supplies meets the water quality standards.

The Regulations include new provisions regarding risk assessment which are a consequence of transposing the Amending Directive. Under Part 3 of the Regulations local authorities must carry out a risk assessment in relation to the water supplied through each private water supply system to premises in their area to

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<sup>(4)</sup> OJ L 330, 5.12.1998, p. 32, as amended by Regulation (EC) No 1882/2203 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1), Regulation (EC) No 596/2009 of the European Parliament and of the Council (OJ L 188, 18.7.2009, p. 14) and Commission Directive (EU) 2015/1787 (OJ L 260, 7.10.2015, p. 6).

<sup>(5)</sup> OJ L 260, 7.10.2015, p. 6

<sup>(6)</sup> OJ L 296, 7.11.2013, p. 12.

establish if there is any risk that the water could pose a potential danger to human health, with each initial risk assessment being completed before 1 January 2022. The risk assessment must be carried out using a methodology which is approved by the Drinking Water Quality Regulator for Scotland (DWQRS). Risk assessments are to be reviewed and if necessary updated at least every 5 years, or earlier if there are adverse changes to the quality of the water or modifications to the supply system. There are also requirements in relation to registration and risk assessment of unused or disused systems being brought into use.

Part 5 of the Regulations sets out requirements for local authorities to ensure that regular monitoring of the quality of water in their area is carried out to check that water available to consumers meets the prescribed water quality standards, and requires local authorities to prepare and implement a monitoring programme for each supply zone. The supply zone will be designated by the DWQRS who will determine which private supplies form part of the supply zone. This Part also specifies the methods of analysis to be used. The detailed requirements regarding monitoring and methods of analysis are given in schedules 3 and 4 of the Regulations, which transpose the new Annexes II and III of the Drinking Water Directive.

The other main provisions in the Regulations are as follows.

Part 1 makes general provision for citation, commencement, extent, application, interpretation etc. This Part also makes further provision in relation to supply zones and water from those supplies which are exempt from the Regulations. Water is generally exempt if the water is supplied from a private water supply system which provides (in total) less than 10 m<sup>3</sup> of water a day or serves (in total) fewer than 50 persons. However, water is not exempt if it is supplied as part of a commercial or public activity, or it is supplied to premises used for a commercial or public activity.

New provision in relation to a register of supply systems is contained in Part 2. The register is to contain information in relation to each large private water supply system used to supply water to premises in a local authority's area and the quality of the water in and supplied by the system. The detail of the information required is specified in schedule 1 of the Regulations and the contents of the register are to be reviewed annually. The owner of premises which receive water through an unrecorded part of a supply system must give the local authority for the area the information it needs to register that part of the system. This part of the Regulations also contains requirements for local authorities to provide access to certain information about water quality.

Part 4 makes provision in relation to water quality standards and duties. This part sets out the requirements for water quality at each point of compliance as specified in the Drinking Water Directive and introduces a duty of care on a person not to take any action which has the effect of a deterioration in the water quality and to ensure that no substance or material used or introduced into a supply of water either remains in the water at concentrations higher than necessary or reduces the protection of human health.

Part 6 makes provision in relation to investigation and remedial action. It sets out requirements for local authorities to investigate failures of water to meet the

prescribed parametric values and ensure remedial action is taken and inform consumers of the water if the water supply poses a potential danger to human health.

Part 7 makes provision in relation to information and reporting. It places duties on owners of premises served with a private water supply to provide consumers of the water with information on its quality and, in commercial or public premises, to display a notice with information about the source, quality and treatment of the water. Part 7 also places duties on local authorities to provide information on water quality annually to certain public authorities and on the DWQRS to publish a report on private water quality in Scotland every three years.

New provision in relation to enforcement powers is contained in Part 8. This places a duty on local authorities to monitor compliance with, and enforce the provisions of, the Regulations. It gives local authorities power to serve a notice (an “information notice”) on a person requiring the person to provide information including relevant documentation on water quality, and also confers powers of entry and inspection in relation to establishing compliance with the Regulations. It introduces provision for remediation and enforcement notices by reference to schedules 6 and 7 respectively. A remediation notice can be served by a local authority where it reasonably believes that a supply of water poses a potential danger to human health or fails to meet the water quality standards. An enforcement notice can be served where the local authority reasonably believes that a person has contravened or is contravening a requirement of the Regulations and is not rectifying the contravention or preventing its recurrence. With both forms of notice there is a right of appeal to the sheriff, and action can be taken by the local authority in response to a failure to comply with a notice. Failure to comply with a notice is an offence.

Part 8 also makes provision for a local authority to act where it reasonably believes urgent action is required to reduce or remove a risk to public health or the quality of a water supply as a result of a person’s contravention or failure to comply with the Regulations. The local authority may undertake the necessary work itself or serve an emergency notice on the person requiring them to take such steps as it considers necessary. Part 8 also contains a new power of the DWQRS to give directions or guidance to local authorities as to the exercise of their functions under the Regulations.

New provision in relation to offences is made in Part 9. An offence is committed by a person failing to comply with the duty to provide information, duties in relation to bringing into use unused or disused systems, and duties of care in relation to supplies of water and substances and materials; failure to comply with an information notice; obstruction or failing to comply with a requirement under the powers of entry provisions; failure to complete a step required by an emergency notice; and making false statements in applications or in the furnishing of any information required. The penalties vary as to the gravity of the offence, with offences which more directly impact on human health attracting a higher maximum fine.

For the purposes of the Water (Scotland) Act 1980, Part 10 specifies when water to which the Regulations apply is to be treated as being wholesome. The water is to be

regarded as wholesome if it satisfies the water quality standards of the Regulations and unwholesome if it does not.

Schedule 1 contains details of the information which each local authority register of private water supply systems is to contain or specify and the dates by which the register must contain that information.

Schedule 2 sets out the parameters and parametric values as prescribed in the corresponding Annex I of the Drinking Water Directive. The parameters are grouped into microbiological, chemical and indicator parameters.

Schedule 5 contains provisions for derogations, as permitted by the Drinking Water Directive, but without the provision for a third derogation approved by the European Commission which was included in the 2006 Regulations.

Schedule 8 sets out further provision in to relation powers of entry, including giving notice, authorisation by warrant, evidence of authority, securing premises on leaving, compensation and protection of commercially confidential information.

Schedule 9 sets out provisions in relation to the recovery of reasonable expenses for certain activities by local authorities, namely collection and analysis of water samples and carrying out and reviewing risk assessments. The aim of the provision is to ensure that local authorities are able fully to recover the costs of their enforcement of these Regulations. Owing to the diversity of private supplies across Scotland upper limits on these costs are now not specified as they may vary from area to area, but the principle that cost recovery should be for expenses reasonably incurred remains.

## **Consultation**

A public consultation on a draft of the Regulations took place from 6 May to 28 July 2017. The principal amendments made in response to the consultation were as follows:

- A provision included in the consultation draft to allow representations to be made against the intention to serve a remediation or enforcement notice was subsequently removed from the Regulations as local authorities had found similar provisions in other legislation not to be useful and there is in any case a right of appeal against the serving of a notice.
- A stylistic drafting change was made, to no longer use the term “small supply” to describe supplies exempt from the Regulations, as this description thought be misleading.
- The different definitions of “relevant person” have been merged into one and additional qualifying factors introduced.
- The information to be recorded in the register of private supplies has been reduced and simplified.
- Provisions imposing additional duties on water suppliers have been removed in the light of a strong body of opinion that these were potentially too onerous and liable to have unintended adverse consequences on users and consumers of private water supplies.
- The judgment on whether water used in food production can or cannot affect the wholesomeness of the product, and therefore whether or not it is water

intended for human consumption, has been made the responsibility of the competent authority, that is Food Standards Scotland or the relevant local authority, rather than the Drinking Water Quality Regulator for Scotland.

### **Impact assessment**

A partial Business and Regulatory Impact Assessment (BRIA) was included with the consultation. A full BRIA has since been completed, having regard to the consultation responses. An Equality Impact Assessment (EQIA) and a Child Rights and Wellbeing Impact Assessment (CRWIA) were not carried out as the Regulations are not considered to have any significant impact in relation to these matters.

### **Financial effects**

The Regulations will have some financial impact on local authorities and owners and users of public supplies which are detailed in the BRIA. In summary, over the 4 year phasing-in period of the new risk assessment requirements, the total additional costs to all owners and users across Scotland are estimated to be £94,000, an additional annual cost of £23,500. The Regulations require a risk assessment and then a review after 5 years, therefore when compared against the requirements for current supplies of a review every year, it is likely that the cost for each risk assessment for each supply over ten years will be reduced.

Under the new sampling regime, additional monitoring may be necessary to develop an evidence base to allow the removal of certain parameters from monitoring programmes. To mitigate this and the substantial costs that would be incurred by monitoring each supply over the three years specified in the Amending Directive it is proposed to monitor by supply zones which will be groups of private water supplies. The current annual cost of analysis is estimated to be £232,700. It is estimated that the annual monitoring costs will be in the range of £276,000 - £456,000. It is not possible to be more exact until the findings of the research programme into water supply zone designations is complete and the number of zones known.

Drinking Water Quality Division  
The Scottish Government  
September 2017

**Environment, Climate Change and Land Reform Committee**

**25<sup>th</sup> Meeting, 2017 (Session 5)**

**Tuesday 3<sup>rd</sup> October 2017**

**PE1615: State regulated licensing system for gamebird hunting in Scotland**

1. The purpose of this paper is to provide options of any next steps which the Committee to may wish to take in relation to the petition.

**Background**

2. Petition [PE1615](#), from Logan Steele on behalf of the Scottish Raptor Study Group, was lodged on 22 August 2016. It calls on the Scottish Parliament to urge the Scottish Government to implement urgent action to introduce a state regulated system of licensing of gamebird hunting, that addresses the potentially adverse environmental impact of gamebird hunting, provides for the revocation or amendment of licences where a licence-holder fails to comply with their terms and conditions, and to implement the recommendations of the Review of Wildlife Crime Penalties in Scotland.

**Previous Committee consideration**

3. The Committee first considered the petition at its [meeting on 31 January 2017](#) where it agreed to:

- write to the Cabinet Secretary for Environment, Climate Change and Land Reform seeking information on the operation of current legislation in this area; and
- request more details on when the SNH commissioned research on gamebird licensing systems in selected other countries might be published.

4. [The SNH report was subsequently published on 25 February 2017](#) and the Committee received [a response from the Cabinet Secretary for the Environment, Climate Change and Land Reform](#) on the Scottish Government's work in this area (attached in the **Annexe**).

5. At its [meeting on 18 April 2017](#) the Committee took evidence from the petitioner Mr Steele who was accompanied by Andrea Hudspeth of the Tayside Raptor Study. The Committee also heard from the following panel of stakeholders:

- Duncan Orr-Ewing, The Royal Society for the Protection of Birds Scotland;
- David Johnstone, Scottish Land & Estates;
- Andy Smith, Scottish Gamekeepers Association; and
- Robbie Kernahan, Head of National Operations, Scottish Natural Heritage

6. At its [meeting on 23 May 2017](#) the Committee considered a number of possible options in relation to the petition. It agreed (by division: For 6, Against 4, Abstention 0) to:

“[write to the Cabinet Secretary for Environment, Climate Change and Land Reform](#) suggesting that the Scottish Government explore with stakeholders the need for/benefit of a state regulated licensing system for gamebird hunting in Scotland, how it might operate in practice, what it might encompass, how it could be appropriately enforced and whether such a system might feasibly be trialled in a specific area. It also noted proposals put forward by [Scottish Land & Estates, the British Association for Shooting and Conservation, the Scottish Gamekeepers Association and the Scottish Moorland Group](#) in a written submission to the Committee dated 19 May 2017; and keep the petition open.”

7. The Cabinet Secretary’s [formal response to the Committee’s letter](#), dated 20 June 2017, referred to [a letter from 31 May 2017](#) (provided in full in the **Annexe**) where Ms Cunningham announced a package of measures aimed at tackling wildlife crime. This included the establishment of a group to:

“...examine how we can ensure that grouse moor management continues to contribute to the rural economy while being environmentally sustainable and compliant with the law, including consideration of licensing this type of shooting business.”

### **Committee Consideration**

8. Following the Committee’s letter to the Scottish Government and the Cabinet Secretary’s subsequent establishment of a review group which will consider a licensing system for gamebird hunting, the Committee may wish to:

- close the petition, given that it has asked the Scottish Government to consider a licensing scheme. The Committee would nevertheless continue to monitor the progress of the review group and consider its eventual recommendations. The Committee would also write to the petitioner to thank him for highlighting the issue and that he would be kept informed of the Committee’s continued scrutiny of this work; or
- keep the petition open while awaiting the results of the review group.

9. **Members are invited to agree a course of action in relation to the petition.**

**Clerks/SPICe**

**Environment, Climate Change and Land Reform Committee**

## Annexe

**Letter from the Cabinet Secretary for Environment, Climate Change and Land Reform to the Convener of the Environment, Climate Change and Land Reform Committee**

I am writing to inform you that the report Analyses of the fates of satellite tracked golden eagles in Scotland – Scottish Natural Heritage Commissioned Report No. 982 will be published by Scottish Natural Heritage at 2.30pm today.

As you will be aware, I ordered this review in August 2016 to find out more about the suspicious disappearance of a number of satellite-tagged golden eagles in north-east Scotland.

The report can be downloaded from the SNH website at:

<http://www.snh.gov.uk/publicationsdata-and-research/publications/new/>

The key findings of the report are:

- Of 131 young eagles tracked, as many as 41 (31%) have disappeared under suspicious circumstances. These disappearances are significantly connected with contemporaneous records of illegal persecution.
- The suspicious disappearances occurred mainly in six areas of the Highlands (predominantly in the central and eastern Highlands). Some, but not all, areas managed as grouse moors were strongly associated with the disappearance of many of the tagged eagles.
- Tagging revealed that the persecution of young eagles is suppressing the golden eagle population in the central and eastern Highlands, and hampering overall recovery from historic, widespread, persecution.
- Wind farms were not associated with any recorded golden eagle deaths, and there were very few records of tagged young golden eagles near wind farms.
- Operations associated with tagging had no discernible adverse effects on the welfare, behaviour or survival of the birds.

In light of the conclusions of this report and your letter to me of 24 May setting out the Committee's thoughts and recommendations regarding the petition on the licensing of shooting businesses, I am today announcing a package of further measures to address this ongoing problem which is blighting our natural environment and Scotland's reputation. These measures are as follows:

- I am publishing a map showing the clusters of disappeared birds, with grid references confirming the last location fix for the tagged eagles which disappeared.



- I will ask Scottish Natural Heritage and my officials to explore options, using existing powers, which could be used to order the temporary or permanent cessation of activities linked to grouse moor management where we have good reason to believe that they are harming highly protected raptor species.
- To enhance enforcement and prevention, I will work with Police Scotland to recruit a team of Special Constables focused on wildlife and other rural crime, starting with a pilot scheme in the Cairngorms National Park. After careful consideration, I have decided that this is a better route than giving further investigative powers to SSPCA inspectors. I am very grateful to the SSPCA for their public-spirited offer and their patience while we have considered this proposal.
- I will establish a group to examine how we can ensure that grouse moor management continues to contribute to the rural economy while being environmentally sustainable and compliant with the law, including consideration of licensing this type of shooting business.
- I am commissioning a research project to examine both the benefits and costs of large shooting estates to Scotland's economy and biodiversity.
- I am keen to examine ways in which we can protect the employment and other rights of gamekeepers and their role in enhancing biodiversity, not just game interests.

Further details on each of these proposals, which add to those we have already implemented or are committed to delivering, will be made available in due course. I believe that we are sending a strong message to wildlife criminals and the general public that the Scottish Government will continue to do all that it can, including working closely with partners, to tackle the illegal persecution of our protected wildlife.

**Roseanna Cunningham MSP**  
**Cabinet Secretary for Environment, Climate Change and Land Reform**  
**31 May 2017**