

Item: 7

Development and Infrastructure Committee: 4 June 2019.

Private Water Supplies.

Report by Executive Director of Development and Infrastructure.

1. Purpose of Report

To consider the draft Type B Private Water Supplies Policy, review charges for regulating private water supplies and consider criterion in respect of private water supply mandatory grants.

2. Recommendations

The Committee is invited to note:

2.1.

That, in Scotland, private water supplies are defined as those that are not provided by Scottish Water and where the water is intended for human consumption.

2.2.

The two types of private water supplies, covered by different regulations and legislation, as detailed in section 3 of this report.

2.3.

That, in November 2006, the Council agreed a policy in respect of private water supplies, which set out procedures for sampling, charging and grant eligibility.

2.4.

That, following an internal audit report on private water supplies presented to the Monitoring and Audit Committee on 7 June 2018, the following recommendations were made:

- A policy should be prepared, setting out how the Council would regulate Type B supplies.
- A review should be undertaken of the criteria for demonstrating undue hardship in respect of private water supply grants.
- A review should be undertaken of charges for Regulation 2 and Type B supplies.

2.5.

Options in respect of charging for regulating private water supplies, as outlined in sections 5.5 and 5.10 of this report, with the preferred options being as follows:

- Regulated supplies - Option 1, namely to recover costs in relation to collecting water samples, the analysis of water samples, carrying out a risk assessment and reviewing a risk assessment.
- Type B supplies – Option 1, namely to recover costs up to the statutory maximum but to waive charges, which would otherwise apply to Type B supplies, where the eligible person is in receipt of a means tested benefit.

2.6.

The criterion proposed in respect of private water supply grants, as detailed in section 6.3 of this report.

It is recommended:

2.7.

That the Type B Private Water Supplies Policy, attached as Appendix 1 to this report, be approved.

2.8.

That persons in receipt of one or more means tested benefits should receive 100% grant aid in respect of private water supplies.

2.9.

That the following charges in respect of private water supplies be implemented:

- Regulated supplies - recover costs in relation to collecting water samples, the analysis of water samples, carrying out a risk assessment and reviewing a risk assessment.
- Type B supplies - recover costs up to the statutory maximum but to waive charges, which would otherwise apply to Type B supplies, where the eligible person is in receipt of a means tested benefit.

3. Background

3.1.

In November 2006 the Council determined its policy in relation to private water supplies with respect to the sampling, charging and the circumstance in which a person became eligible for the payment of grant more than the statutory maximum.

3.2.

In Scotland, private water supplies are defined as those that are not provided by Scottish Water and where the water is intended for human consumption. Regulations aim to protect human health from the adverse effects of any contamination of water by ensuring that the water meets water quality standards. Private water supplies can present a significant risk to the health of those consuming water from these supplies where water is inadequately managed.

3.3.

There are two types of private water supplies and the legislation relating to each is different. The 2017 Regulations define Regulated supplies (formally Type A as defined by the 2006 Regulations) and in general terms apply to larger private water supplies, or those with a commercial activity. Under the 2017 Regulations, privately rented properties are considered commercial premises. The 2006 Regulations apply to exempt supplies which are smaller private water supplies that only serve domestic properties, they are defined as Type B supplies in the 2006 Regulations.

3.4.

There are approximately 240 private water supplies throughout Orkney consisting of both Regulated supplies and Type B supplies as defined in the legal section of this report. These serve an estimated maximum population of around 1,600. The local authority has a duty to sample and risk assess annually the water supplies for Regulated supplies. Although Type B need to be registered, they do not need to be tested or risk assessed unless requested to do so. When requested to do so this must be done within 28 days of the request being made. Type B supplies are also tested where problems with the supply have come to light.

3.5.

Although Type B supplies are exempt from the full provisions of the Drinking Water Directive, the Directive is clear that for these supplies to be exempt, the population concerned must be informed of the potential risks to health. Type B supplies are still subject to national water quality standards. Information is provided on the Council's website with links to national advice. All known users of private water supplies have been written to giving advice and where to find further information.

3.6.

Local authorities must provide advice and assistance to the relevant person(s) to enable them to carry out a risk assessment on their supply. However, local authorities have the power to undertake a risk assessment whether or not requested to do so by the relevant person(s).

3.7.

Local authorities have the power to sample from Type B supplies at any time regardless of whether the relevant person has requested such a sample or not. For example, if one property on a Type B supply poses a risk to health, it would be prudent to take samples from all the properties on that supply. In order to provide the relevant person(s) with appropriate advice in regard to their water supply it is necessary to undertake a risk assessment at that time. Local authorities also have the power to take samples to confirm or clarify previous results and to establish the adequacy of any remedial action that may have been taken regarding the supply.

4. Type B Sampling Policy

4.1.

An Internal Audit Report, Environmental Health – Private Water Supplies, was presented to the Monitoring and Audit Committee on 7 June 2018 and determined that once the position regarding revised Type B regulations was known, a policy should be prepared setting out how the Council would regulate Type B supplies. However, the Drinking Water Quality Regulator has advised that proposed regulations with respect to Type B supplies that were due last year have been put on hold with no projected implementation date.

4.2.

In 2014 the Drinking Quality Regulator recommended that all local authorities should have a clear policy on how Type B supplies would be regulated in their areas. This should state how supplies would be monitored, sampling programme, charging regime and enforcement policy. The draft Policy, attached as Appendix 1 to this report, sets out the procedures for the regulation of Type B supplies.

4.3.

Current sampling protocol for Type B supplies is aligned with the legislative minimum requirements namely to sample on request or where direct information indicates a supply presents a public health risk. The Council can determine to sample all Type B supplies on a regular basis, for example once every five years. This will have resource implications as expense recovery is limited by statute.

4.4.

In relation to both Regulated and Type B supplies where remedial action is required the Council has powers under legislation to serve notice, if necessary undertake works in default, and where appropriate, report possible offences to the Procurator Fiscal. The response to failing supplies is governed by the Council's Environmental Health and Trading Standards Enforcement Policy.

5. Charging Options

5.1.

With the introduction of the 2017 Regulations and recognising the length of time since the last charging policy was approved, there is a need to reconsider the charging policy for private water supplies. This was recognised in the Internal Audit report which recommended that changes to the policy and the associated rates should be carried out in accordance with the Corporate Charging and Concessions Policy. Any review of charging should also consider the charging in relation to Type B supplies. Where sampling or risk assessment work is undertaken as part of a grant application, costs to the Council are recovered from the Scottish Government under Section 47 of the Local Government in Scotland Act 2003.

5.2.

Cost recovery was previously capped, but under the 2017 Regulations the local authority may charge a person for expenses reasonably incurred by it in relation to a Regulated supply of water, as follows:

- For collecting water samples.
- For the analysis of water samples.
- For carrying out a risk assessment.
- For reviewing a risk assessment.

5.3.

Although the charging process for private water supplies was last approved by the Council in November 2006, this is consistent with 2017 Regulations. A charging calculation methodology is followed which takes into account staff time, travel, sampling cost and undertaking the risk assessments and their review. However only Regulated supplies are invoiced which is consistent with the current policy.

5.4.

There are currently 32 Regulated supplies in Orkney. These supplies serve 63 commercial and 92 domestic premises. However, this number will increase as work is ongoing to identify those properties which are privately rented. It is the landlord's responsibility to ensure the private water supply meets standards.

5.5.

Charging options in respect of Regulated Supplies:

5.5.1.

Option 1: Recover costs in relation to collecting water samples, the analysis of water samples, carrying out a risk assessment and reviewing a risk assessment. This is the recommended option.

5.5.2.

Option 2: Undertake the service without charge.

5.5.3.

Option 3: Undertake the service without charge and charges should only be made in respect of costs incurred following remedial works or when formal enforcement action had been necessary.

5.6.

In accordance with the current policy no charges are made for typical Type B sampling or risk assessment, the cost being borne by the Council. There is provision in the 2006 Regulations for charges.

5.7.

Cost recovery may reduce the number of requests for sampling where occupiers have legitimate concerns over the quality of their supply, this is not then redressed.

5.8.

For Type B supplies a local authority may charge a person for expenses reasonably incurred as follows: -

- Sampling up to a maximum of £70 per visit to any premises.
- The analysis of samples, up to a maximum charge of £48 per visit.
- Preparatory work, including if required, visiting premises or the source in relation to a risk assessment, up to a maximum of £70.
- The carrying out of a risk assessment, up to a maximum of £50.

5.9.

For the known 207 Type B supplies the Council receives, on average, 17 requests for sampling per year. The majority of these supplies require work to improve the quality of the water. Where sampling and assessment is part of processing a private water supply grant the sampling costs and administration are recovered from the Scottish Government. Typical costs for analysis for a Type B sample is £46.17, together with officer time and travel cost, average cost £80, giving a total average cost of approximately £130, which is within the limits set out in section 5.8 above. Where costs are not recoverable via the grants process the charging options are detailed below.

5.10.

Charging options in respect of Type B supplies:

5.10.1.

Option 1: Recover costs up to the statutory maximum in relation to water sampling, the analysis of water samples, preparatory work, including visiting premises or the source in relation to a risk assessment and carrying out a risk assessment but to waive charges, which would otherwise apply to Type B supplies, where the eligible person is in receipt of a means tested benefit. This is the recommended option.

5.10.2.

Option 2: Undertake the service without charge.

5.10.3.

Option 3: Undertake the service without charge and charges should only be made in respect of costs incurred following remedial works or when formal enforcement action had been necessary.

6. Grant

6.1.

Under the provisions of The Private Water Supplies (Grants) (Scotland) Regulations 2006, mandatory grants of up to £800 are available to assist users to improve the quality of their private water supplies. The regulations state that 'a local authority may pay to an eligible person a grant in excess of £800, where satisfied that the eligible person could not, without undue hardship, finance the expense of the approved works without such a grant'. Current policy is for 100% grant to be paid to persons in receipt of Council Tax benefit. This benefit scheme has been replaced and therefore the policy needs to be reviewed.

6.2.

The value of grants paid in 2017 to 2018 and 2018 to 2019 was approximately £11,000 and £7,500 respectively. Annual returns are made to the Scottish Government on the grants awarded, to claim reimbursement of all grants paid under Section 47 of the Local Government in Scotland Act 2003. A return and report are also made of the activities carried out.

6.3.

Costs required for works to upgrade private water supplies can range from below the statutory maximum of £800 to several £1,000s, such where a new bore hole and associated plumbing, filters and treatment are required. It is proposed that persons in receipt of one or more means tested benefit should receive 100% grant aid. The current main means tested benefits are Housing Benefit, Council Tax Reduction, Employment and Support Allowance, Jobseekers Allowance, Pension Credit and Universal Credit.

7. Equalities Impact

An Equality Impact Assessment has been undertaken and is attached as Appendix 2 to this report.

8. Corporate Governance

This report relates to governance and procedural issues and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

9. Financial Implications

9.1.

Approximately £2,900 was recovered in relation to the sampling and risk assessing of Regulated private water supplies in 2017 to 2018. If costs are recovered from Type B supplies that request samples this would equate to approximately £1,000 of additional income to the Environmental Health service revenue budget.

9.2.

The award of any private water supply grant by the Council is recoverable in full from Scottish Government.

10. Legal Aspects

10.1

The Council has a duty to ensure certain water supplies comply with the standards set out in the Water (Scotland) Act 1980, the 2006 Regulations and the 2017 Regulations. These regulations bring into effect the EU Drinking Water Directive 98/83/EC.

10.2.

The 2006 Regulations and the 2017 regulations (which came into force on July 2006 and 27 October 2017 respectively) impose a legal duty on the Council to regulate and enforce both sets of Regulations with regard to registering, risk assessing, sampling monitoring and investigating private water supplies in order to establish whether they meet wholesomeness and water quality standards. The policy will assist the Council in discharging such duties.

10.3.

If grant assistance is to be provided by the Council, a legally-binding agreement will require to be entered into between the Council and the recipient setting out the terms on which the funding is being provided

11. Contact Officers

Gavin Barr, Executive Director of Development and Infrastructure, extension 2301, Email gavin.barr@orkney.gov.uk

Roddy MacKay, Head of Planning, Development and Regulatory Services, extension 2530, Email rodny.mackay@orkney.gov.uk

David Brown, Environmental Health Manager, extension 2817, Email david.brown@orkney.gov.uk

12. Appendices

Appendix 1 – Draft Type B Private Water Supplies Policy.

Appendix 2 – Equality Impact Assessment.

Orkney Islands Council

Draft Policy with respect to Type B Private Water Supplies

Introduction

In Scotland, private water supplies (PWS) are defined as those that are not provided by Scottish Water and where the water is intended for human consumption. The Private Water Supplies (Scotland) Regulations 2006, which apply to small domestic supplies, aim to protect human health from the adverse effects of any contamination of water by ensuring that the water meets water quality standards. The regulations refer to these supplies as Type B supplies. PWS can present a significant risk to the health of those consuming water from these supplies where water is inadequately managed.

Local authorities have the power to sample from Type B supplies at any time regardless of whether the relevant person has requested such a sample or not. For example, if one property on a Type B supply poses a risk to health, it would be prudent to take samples from all the properties on that supply. Local Authorities also have the power to take samples to confirm or clarify previous results and to establish the adequacy of any remedial action that may have been taken in regard to the supply.

How we will monitor Type B supplies in your area

We will continually review the Private Water Supply register and promote the need to register private water supplies.

Sampling and risk assessment programmes

No proactive programme of sampling or risk assessment to take place, however we will provide advice, sample and risk assess on request. Additionally, where information of concern or complaint is raised, we will sample, and risk assess where necessary.

We will provide private water supply health issue updates to known properties on supplies. (e.g. Drinking Water Quality Regulator information leaflets, and on our and partner agency websites: <http://www.orkney.gov.uk/Service-Directory/E/private-water-supplies.htm> and <https://www.mygov.scot/housing-local-services/water-supplies-sewerage/private-water-supplies/>).

Charging Scheme

Note: This will be determined following the decision of Development and Infrastructure Committee on the 4 June 2019 and reference links to the Council's charging register.

Enforcement Policy

Enforcement powers will be used in accordance with the Council's Environmental Health and Trading Standards Enforcement Policy in consultation with the Director of Public Health. The enforcement policy can be found at <http://www.orkney.gov.uk/Service-Directory/E/enforcement-policy.htm>.

As most of our dealings with properties on Type B supplies are in connection with request samples or house sales we risk assess and give advice on how to improve the supply and offer grant where applicable to improve the water quality. Enforcement powers will not be used to improve supplies in these instances.



Equality Impact Assessment

The purpose of an Equality Impact Assessment (EqIA) is to improve the work of Orkney Islands Council by making sure it promotes equality and does not discriminate. This assessment records the likely impact of any changes to a function, policy or plan by anticipating the consequences, and making sure that any negative impacts are eliminated or minimised and positive impacts are maximised.

1. Identification of Function, Policy or Plan	
Name of function / policy / plan to be assessed.	Costs in relation to sampling and risk assessments. Private Water Supply Grants
Service / service area responsible.	Environmental Health
Name of person carrying out the assessment and contact details.	David Brown, Ext. 2817, Email: david.brown@orkney.gov.uk
Date of assessment.	21 January 2019
Is the function / policy / plan new or existing? (Please indicate also if the service is to be deleted, reduced or changed significantly).	Existing

2. Initial Screening	
What are the intended outcomes of the function / policy / plan?	To cover the cost of sampling and risk assessing Type B water supplies as defined by the Private Water Supply (Scotland) Regulations of those in receipt of means tested benefits. To cover the cost of works required to bring a failing supply up to the required standard where the cost of the works exceeds the statutory maximum grant of £800.
Is the function / policy / plan strategically important?	No
State who is, or may be	Households who are in receipt of means tested

affected by this function / policy / plan, and how.	benefits such as Housing Benefit, Council Tax Reduction, Employment and Support Allowance, Jobseekers Allowance, Pension Credit and Universal Credit.
How have stakeholders been involved in the development of this function / policy / plan?	No
Is there any existing data and / or research relating to equalities issues in this policy area? Please summarise. E.g. consultations, national surveys, performance data, complaints, service user feedback, academic / consultants' reports, benchmarking (see equalities resources on OIC information portal).	No Labour Market Profile Data from Nomis provides some evidence relating to the numbers of people in Orkney who are in receipt of Out-of-Work Benefits as at November 2018. These figures are based on claimant count which is the number of people claiming benefit principally for the reason of being unemployed. The measure of the number of people receiving Universal Credit principally for the reason of being unemployed is still being developed by the DWP and therefore does not correctly reflect the total figures. Previous data (as at November 2016) relating to working-age people who are claiming one or more DWP benefits (including Disability Living Allowance) has also been used to further indicate potential impacts.
Is there any existing evidence relating to socio-economic disadvantage and inequalities of outcome in this policy area? Please summarise. E.g. For people living in poverty or for people of low income. See The Fairer Scotland Duty Interim Guidance for Public Bodies for further information.	(Please complete this section for proposals relating to strategic decisions).
Could the function / policy have a differential impact on any of the following equality areas?	(Please provide any evidence – positive impacts / benefits, negative impacts and reasons).
1. Race: this includes ethnic or national groups, colour and nationality.	No. The policy will apply to all private water supply users irrespective of race. Any impact is unlikely to be significant.
2. Sex: a man or a woman.	No. The policy will apply to all private water supply users irrespective of sex. Any impact is unlikely to be significant. Although based only on Out-of-Work Benefits, the most recent figures from Nomis indicate that there is a greater proportion of males

	(0.9%) in comparison to females (0.7%) who are in receipt of benefits.
3. Sexual Orientation: whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.	No. The policy will apply to all private water supply users irrespective of sexual orientation. Any impact is unlikely to be significant.
4. Gender Reassignment: the process of transitioning from one gender to another.	No. The policy will apply to all private water supply users irrespective of gender reassignment. Any impact is unlikely to be significant.
5. Pregnancy and maternity.	No. The policy will apply to all private water supply users irrespective of pregnancy or maternity. Any impact is unlikely to be significant.
6. Age: people of different ages.	No. The policy will apply to all private water supply users irrespective of age. Any impact is unlikely to be significant.
7. Religion or beliefs or none (atheists).	No. The policy will apply to all private water supply users irrespective of religion or belief. Any impact is unlikely to be significant.
8. Caring responsibilities.	No. The policy will apply to all private water supply users irrespective of caring responsibilities. Any impact is unlikely to be significant.
9. Care experienced.	No. The policy will apply to all private water supply users irrespective of care experienced. Any impact is unlikely to be significant.
10. Marriage and Civil Partnerships.	No. The policy will apply to all private water supply users irrespective of marriage and civil partnership. Any impact is unlikely to be significant.
11. Disability: people with disabilities (whether registered or not).	No. The policy will apply to all private water supply users irrespective of disability. The working-age client group data from Nomis (as at November 2016) show that 0.9% of main benefits claimants are identified as having a disability. Nationally, evidence shows that people with disabilities are more likely to experience poorer outcomes in terms of employment, income and education. There is potential for this to have a positive differential impact.
12. Socio-economic disadvantage.	Yes. Research shows that socio-economic disadvantage can include multiple factors such as low income, material deprivation, area deprivation and socio-economic background. Not all persons on a low income may be eligible for a means

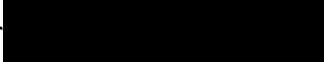
	tested benefit. More extensive works to a private water supply may cost £1000s. this will still not be affordable by persons on low income. It is not known what the impact of Universal Credit will be as some individuals will be eligible for this means tested benefit while employed.
13. Isles-proofing.	As above

3. Impact Assessment

Does the analysis above identify any differential impacts which need to be addressed?	Those whose income is low but above entitlement to benefits may not be able to afford improvements to their water supply.
How could you minimise or remove any potential negative impacts?	Development of a financial assistance scheme.
Do you have enough information to make a judgement? If no, what information do you require?	No. Further work would be required to determine incidences of hardship and development of criteria to define threshold of hardship.

4. Conclusions and Planned Action

Is further work required?	Yes
What action is to be taken?	Regular review of any cases, applications for grant or feedback received to monitor potential cases of hardship. Applicants signposted to other means of assistance, e.g. Orkney Care and Repair.
Who will undertake it?	Environmental Health Section
When will it be done?	Ongoing
How will it be monitored? (e.g. through service plans).	Regular review of any cases, applications for grant or feedback received to monitor any unintended impacts that haven't been identified at this stage. Results will be fed back into this Equality Impact Assessment

Signature: 
Name: David Brown, Environmental Health Manager

Date: 21 January 2019
(BLOCK CAPITALS).

Please sign and date this form, keep one copy and send a copy to HR and Performance. A Word version should also be emailed to HR and Performance at hrsupport@orkney.gov.uk