

Water Supply (Water Fittings) Regulations 1999

Enforcement policy



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The Water Supply (Water Fittings) Regulations 1999 (as amended) make provision for preventing the waste, misuse, undue consumption, contamination and erroneous measurement of water. We are committed to protecting the safety of your water supply and are responsible to the Government (Department for Environment, Food and Rural Affairs) for the enforcement of the Regulations in our area of supply.

Introduction

The Water Supply (Water Fittings) Regulations 1999 (as amended) make provision for preventing the waste, misuse, undue consumption, contamination and erroneous measurement of water supplied by water undertakers. These Regulations replaced and revoked our Water Byelaws.

Owners and occupiers of premises that are, or will be, connected to the public water supply, and anyone who installs plumbing systems or water fittings have a legal duty to ensure that their water systems comply with the requirements of the Regulations. New and existing installations are inspected by our Regulations Officers who are authorised to enter premises and check that the Regulations are being complied with.

We are committed to protecting the safety of your water supply and are responsible to the Government (Department for Environment, Food and Rural Affairs – Defra) for the enforcement of the Regulations in our area of supply.

This policy explains how the Regulations are enforced and has been developed with regard to the Regulators' Code, the Enforcement Concordat, the Code for Crown Prosecutors, the Prosecutors' Convention and the enforcement policies of Defra, the Drinking Water Inspectorate (DWI), local authorities and other agencies with whom we work closely.

Aim of this policy

- To ensure a consistent approach to enforcement of the Water Fittings Regulations within our supply area
- To provide all staff who take enforcement decisions with guidelines to enable them to make decisions in the field, consistent with current Government advice and best practice
- To inform duty holders and the public of the principles by which enforcement action is taken

Departure from this policy must be exceptional and the reasons will be documented.

The purpose and method of enforcement

The appropriate use of enforcement powers is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures to safeguard against the waste, misuse, undue consumption, contamination and erroneous measurement of the water we supply.

We have a range of options available in seeking to ensure the above aims are met; from providing advice and verbal warnings, to initiating prosecution where the circumstances warrant punitive action.

We have adopted a graduated approach to enforcement in accordance with the Regulators' Code and the regulatory principles under the Legislative and Regulatory Reform Act 2006.

We recognise that the best way to achieve compliance is to ensure, by adopting an educative approach and discussing the requirements, that duty holders understand the nature and extent of their responsibilities and comply voluntarily.

Decisions on appropriate enforcement action will be taken based primarily on an assessment of risk to public health and/or whether there is excessive wastage of water, but will also be influenced by the compliance history of the duty holder with the Water Fittings Regulations, and their willingness to remedy contraventions. Action taken in respect of the prevention of the waste, misuse and undue consumption of water will be commensurate with our leakage reduction strategy and water efficiency targets.

We are committed to effective and early co-ordination of our investigations with other authorities as described in the Prosecutors' Convention 2009. Where a situation could be investigated and dealt with by more than one authority, we will seek to ensure that matters are co-ordinated from the earliest possible stage so that only one investigation and line of enforcement takes place, or if this is not possible, that proper co-ordination takes place to ensure public confidence in the outcome of each case, and enforcement of the law in a fair and effective way.

To this end, we are also committed to entering into, publishing and keeping up to date relevant memoranda of understanding with other relevant authorities.

Principles of enforcement

We believe in firm but fair enforcement of the legislation. This should be informed by the principles of proportionality in applying the law and securing compliance; consistency of approach; targeting enforcement action; transparency about how we operate in our regulatory approach and what those regulated may expect; and accountability for actions taken.

We have adopted these principles and apply them to both enforcement in particular cases and to the management of our enforcement activities as a whole.

Proportionality

We recognise that most individuals and businesses want to comply with the law. Therefore, in most situations the proportionate response will be a partnership approach, whereby we co-operate with duty holders to achieve compliance by being open and helpful, offering informal advice and providing the opportunity to discuss compliance issues.

When considering the most appropriate course of action, the circumstances of the case and the attitude of the duty holder will be taken into account, and action taken will be proportionate to the seriousness and persistence of any contraventions.

Where practicable, we will take particular care to work with small businesses and voluntary and community organisations, enabling them to fulfil their legal obligations whilst keeping any associated costs and disruption to a minimum.

Consistency

We will carry out our duties in a fair, equitable and consistent manner. Officers are, however, expected to exercise judgement in individual cases and in practice are faced with many variables, including the attitude and competence of duty holders, the seriousness of the breach, the degree of risk, and the compliance history of the duty holder.

We therefore recognise that in practice consistency is not a simple matter and have arrangements in place to promote consistency, including ongoing professional development training and liaison with other water companies, enforcement agencies and interest groups.

Targeting

In taking a proportionate approach to enforcement, we apply the principles of risk assessment, with attention focused on those whose activities give rise to the most serious risks, or where potential hazards are least well controlled. This involves identifying and focusing on premises where there is evidence of a greater potential for harm due to unavoidable circumstances such as the inherent nature of an establishment; or as a result of systems and behaviour not conducive to effective risk management, including proficiency and timeliness of response. Throughout this process, the potential health risk that those occupying or visiting particular premises may be subjected to as a result of exposure to contaminated drinking water will be considered together with the risk of contamination to the mains supply.

Transparency

Clear standards for the level of performance required and the level of service available are provided to help duty holders understand what is expected of them and what they can expect from us.

We have produced a leaflet 'Your Water Fittings Inspection Explained' for individuals and businesses that have duties under the Regulations. It contains information on what to expect when a Regulations Officer visits to carry out an inspection, describes what actions may subsequently be taken, and explains what duty holders can expect from us.

Where contraventions are identified by our Regulations Officers and improvements are required, we will provide clear and simple explanations as to why any remedial action is needed and by when. Recommendations may also be made to advise duty holders how to go beyond the minimum legal requirements and comply with current best practice. Additional written advice will be provided on request and will clearly distinguish between legal obligation and best practice. If immediate action is needed, our Regulations Officers will explain why and provide written confirmation.

We will provide clear reasons for any enforcement action at the time it is taken, explain the complaints and appeals process and place these in writing at the earliest opportunity.

Accountability

As a regulatory body, we are accountable for our actions. This means that we must have policies and standards (such as the enforcement principles listed on pages 3-5) against which we can be judged, and have an effective and easily accessible mechanism for dealing with comments and handling complaints.

Our procedures for dealing with comments and handling complaints in relation to enforcement of the Water Supply (Water Fittings) Regulations are set out in the leaflet 'Your Water Fittings Inspection Explained.' In particular, they:

- Describe our complaints procedure in the case of decisions made by our Regulations Officers, or if procedures have not been followed; and
- Explain the right of appeal in the case of enforcement action.

Enforcement options

Informal approach

The standard procedure of giving advice and informing of minor contraventions by means of an informal letter is accepted and understood by individuals and businesses within our supply area. This approach will be used as long as we believe that this will achieve compliance with the Regulations within a timescale that will protect public health, and minimise excessive wastage.

Additional advice will be offered where requested on how to achieve compliance and best practice, clearly differentiating between legal requirements and recommendations of good practice in both verbal and written communications.

Follow-up visits

Where significant breaches have been identified during an inspection, a follow-up visit will be carried out to determine progress towards compliance. Wherever practicable, this will be undertaken by the Regulations Officer who carried out the original inspection.

Warning letters

In situations where we have good reason to believe that infringements exist, an informal approach has proved unsuccessful and neither prosecution nor a simple caution is deemed appropriate, we may issue a warning letter.

We will keep a record of the warning letter issued and this will form part of the compliance history of the business or duty holder.

Enforcement Notices

Where serious and/or widespread infringements exist and an informal approach has proved unsuccessful, or is deemed inappropriate, we may serve Notice on the duty holder formally requiring them to take steps or carry out works as specified in the Notice as necessary to ensure compliance with the Regulations within a specified timescale.

Failure to comply with the Notice is taken seriously and is likely to result in one or more of the following actions being taken.

Disconnection of the supply

Where serious infringements exist and the case is deemed so severe as to constitute an emergency, we may consider it necessary to disconnect the service pipe or otherwise cut off the supply of water to the premises.

The supply of water to the premises may also be disconnected on expiry of an Enforcement Notice where the specified actions or works have not been completed and the premises appears to be unoccupied.

Works in default

If a duty holder fails to carry out the actions or works specified in an Enforcement Notice within the specified timescale, we may carry out such actions or works on behalf of the duty holder and are legally entitled to recover any expenses reasonably incurred from the person or company on whom the Notice was served.

Simple cautions

Under some circumstances a simple caution may be used as an alternative to prosecution as outlined in the Home Office Circular 16/2008. It is not a form of sentence (which only a court can impose), nor is it a criminal conviction. It is, however, an admission of a failure to comply with the Regulations, and may influence how that individual or business is dealt with, should they commit subsequent offences. It may also be cited in court in any subsequent proceedings.

The aims of the simple caution are to:

- Deal quickly and simply with less serious cases where the duty holder has admitted a failure to comply with the Regulations
- Divert less serious offences from the criminal courts
- Record an individual's failure to comply with the Regulations for possible reference in future criminal proceedings or relevant security checks
- Reduce the likelihood of re-offending

A simple caution will only be considered where there is sufficient evidence to give a realistic expectation of success if the case went to the courts. It will not be used as an alternative to prosecution where it is felt that the prosecution case is weak.

The full implications of the caution will be explained to the duty holder, who must consent to accepting a simple caution as the means of disposing of the offence. Failure to achieve this will normally result in the institution of legal proceedings.

Prosecution

Prosecution will generally be reserved for the most serious cases when the duty holder has failed to respond to an informal approach, and will only be initiated following careful consideration. Before initiating prosecution procedures, we will apply the evidence test and the public interest test as described in the Crown Prosecution Service Code for Crown Prosecutors.

The following factors will be considered prior to initiating prosecution procedures:

- The seriousness of the alleged offence
- The severity and scale of potential or actual harm
- Any explanation offered by the duty holder
- The willingness of the duty holder to prevent a recurrence of the contravention
- The previous compliance history of the duty holder
- The likelihood that a defence could be established
- The strength and admissibility of the evidence
- The probable public benefit of a prosecution and the importance of the case in establishing a precedent
- Whether other action would be more appropriate or effective

Penalties for offences

Failure to comply with the provisions of the Water Supply (Water Fittings) Regulations is an offence and any person or business found guilty of such an offence is liable on summary conviction to a fine not exceeding Level 3 of the Government's standard scale of fines for summary convictions.

Defence

The Regulations provide a defence for an owner or occupier charged with an offence which is based on the installation, alteration, repair, connection or disconnection of a water fitting, if they can prove that the work was carried out by an Approved Contractor who certified that the water fitting complied with the requirements of the Regulations.

Powers of entry

Authorised officers have right of entry into any business or domestic premises at a reasonable time, provided (unless in the case of an emergency) 24 hours' notice of the intended entry is given to the occupier.

It is an offence to wilfully deny access to an authorised officer, and any person found guilty of such an offence is liable on summary conviction to a fine not exceeding Level 3 on the standard scale. Should authorised officers be obstructed in the course of their duties, we may obtain a warrant to enter from the courts. This allows entry to be made by force if necessary.

In all cases, authorised officers must provide evidence of their designation and authority prior to entry and must exercise their powers courteously and with respect for persons and property. In circumstances where a warrant has been obtained and is appropriate, authorised officers must only use reasonable force when this is considered necessary and proportionate to the circumstances.

Publicity

We will consider publicising any conviction which could serve to draw attention to the need to comply with the Regulations, or deter anyone tempted to disregard their duties under the Regulations.

Qualification and authorisation of officers

No officer will carry out inspection and enforcement duties unless suitably trained and experienced and authorised by our Water Quality Manager. Continuing professional development training will be provided for all officers enabling them to keep abreast of changes in legislation and good practice. Officers will be fully acquainted with the requirements of this Enforcement policy upon appointment and with any revisions as they arise.

Consultation

This Enforcement policy has been developed in consultation with other water companies and the businesses we regulate through the Water Regulations Advisory Scheme, the Health and Safety Executive, local authorities, Defra and the DWI.

We welcome any comments or questions regarding this policy, which should be addressed to:

The Water Regulations Manager
Bournemouth Water
Francis Avenue, Bournemouth, BH11 8NX.
Tel 01202 597109
waterregs@bournemouthwater.co.uk

Further information and useful contacts

The Water Supply (Water Fittings) Regulations 1999 and amendments

make provision for preventing the waste, misuse, undue consumption, contamination and erroneous measurement of water and are published by Her Majesty's Stationery Office and held in the National Archives. They are available to view or download from www.legislation.gov.uk

Your Water Fittings Inspection Explained: A brief guide for duty holders

is available on our website under 'Publications' at www.bournemouthwater.co.uk or from Customer Service on 01202 590059

Email customerservice@bournemouthwater.co.uk.

More information about the Regulations, including guidance on what duty holders must do to comply with the Regulations, is available from the Water Regulations Advisory Scheme (WRAS) – details below.

WaterSafe

WaterSafe is an umbrella organisation bringing together thousands of qualified contractors employed by plumbing businesses from the seven existing Approved Contractors' Schemes across the UK.

Find a plumbing business near you at www.watersafe.org.uk

The Department for Environment, Food and Rural Affairs (Defra)

Water Supply and Regulation, Area 2C, Ergon House, Horseferry Road, London SW1P 2AL.

www.defra.gov.uk

Tel 0845 933 5577

defra.helpline@defra.gsi.gov.uk

Review

This Enforcement policy will be reviewed annually or when necessary as a result of changes in legislation or centrally issued guidance.

Date of last review September 2014

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