

HAMBLETON DISTRICT COUNCIL

Report To: Cabinet
5 November 2013

Subject: WATER SUPPLIES ENFORCEMENT POLICY

All Wards
Portfolio Holder for Leisure and Health: Councillor Mrs S Shepherd

1.0 PURPOSE OF THE REPORT:

- 1.1 The Local Authority has a duty under section 77 of the Water Industry Act 1991 to take such steps as they consider appropriate for keeping themselves informed about the wholesomeness and sufficiency of water supplies provided to premises in their area, including every private supply to any such premises.
- 1.2 The purpose of this report is to seek approval of a Water Supplies Enforcement Policy in order to ensure consistent and transparent regulatory action in accordance with the Regulators' Code.

2.0 BACKGROUND:

- 2.1 In relation to public water supplies, the Council will comply with their duty by monitoring the annual report produced by the Chief Inspector of Drinking Water. Drinking water must be wholesome and fit for human consumption at all times and the Drinking Water Inspectorate (DWI) take action to require improvements when there is sound evidence of a risk of a particular supply failing to meet drinking water standards. Information about public water supplies is published by the DWI on the basis of reports from the water companies. In Hambleton, public water supplies are provided by Yorkshire Water and Northumbrian Water.
- 2.2 The Private Water Supplies Regulations 2009 came into force on 1st January 2010. Parts 1 and 2 set out standards to which private water supplies must comply and the means by which local authorities are required to monitor and sample those supplies. Standards are set out in the Regulations in relation to a wide range of parameters including microbiological, chemical and certain physical matters. Maximum concentrations are established. Sampling frequencies are prescribed and specific records must be kept. Annual reports are required to be made to the DWI.
- 2.3 The Regulations apply in relation to private supplies of water intended for human consumption. The definition of a private water supply is contained in the Water Industry Act 1991 and in summary means "any supply of water other than a public water supply provided by a water company or a licensed water supplier" and includes public water supplies provided through private distribution systems.
- 2.4 Exemptions are applied in relation to water controlled by Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations, water that is an authorised medicinal product or water used for washing a crop.

- 2.5 In Hambleton there are currently 133 known sources of private water supply that must be risk assessed and sampled. A further 144 private water supplies provide drinking water to single dwellings not used for any commercial activity in relation to which risk assessments are not required.
- 2.6 In the event of a failure in supply quality, Part 3 and 4 of the Regulations provide a comprehensive system for local authorities to enforce the Regulations by making sure that consumers are protected whenever there is a risk to human health through the service of statutory notices. Two routes are available:-
- a) If there is a potential danger to human health, the Local Authority must serve a notice under regulation 18 of the Private Water Supplies Regulations 2009 requiring the prohibition or restriction of the use of the water.
 - b) If there is not a potential danger to human health, but a failure to comply with standards, the local authority must investigate to determine the cause of the failure and may serve a notice under section 80 of the Water Industry Act 1991.
- 2.7 The person responsible for the supply is required to pay for the routine sampling and analysis, risk assessments and our investigation of failures.
- 2.8 This system of sampling and compulsory improvement of supplies replaced a previously less formal system established in 1991. The consequence of the current system is that many supplies may be found to be non-compliant with the prescribed standards. The Local Authority has a duty to assess the risks posed by private supplies, except single non-commercial dwellings, and must take action to secure improvement of those supplies, although there are some exemptions from this requirement.
- 2.9 While the majority of supply owners will take action in response to informal advice, a minority of situations will result in the service of statutory notices. Failure to comply with Regulation 18 notices would render the person responsible liable to prosecution. They do have the right of appeal to a Magistrates' Court. In the event of failure to comply with a Section 80 improvement notice, the local authority has the power to take steps itself and to recover costs from the person on whom the notice was served.
- 2.10 The Local Authority can also take action under Section 80 to remedy supplies that are insufficient for domestic purposes and can take action in default and recover costs. Action could also be taken under the Housing Act 2004 and the Housing Health and Safety Rating System to remedy such a situation. Premises without a satisfactory water supply may also be considered under the statutory nuisance provisions of the Environment Protection Act 1990.
- 2.11 In order to ensure that supply owners, and occupiers of premises receiving private water supplies, can be sure that a consistent approach is being made towards the enforcement of these provisions, the attached Enforcement Policy has been developed. This will ensure an open and transparent approach is taken to enforcement. In addition, the Environmental Health Service will provide information and advice on a proactive as well as reactive basis. The Service also plans to hold seminars for supply owners to provide advice and make available commercial sources of information and equipment to help them meet their obligations

3.0 LINK TO COUNCIL PRIORITIES:

- 3.1 This enforcement policy links to the Council's priority of providing excellent and effective services to our customers.

4.0 RISK ASSESSMENT:

4.1 There are no significant risks associated with approval of the Policy.

4.2 Risk in not approving the recommendation

Risk	Implication	Prob*	Imp*	Total	Preventative action
Inconsistent enforcement of water supply duties and powers	Unacceptable risk to human health and variable treatment of supply owners by enforcement officers	3	4	12	Require all enforcement work to be undertaken by one officer
The Council fails to comply with its legal responsibilities	Loss of reputation, failure to follow legal processes and failure to protect vulnerable consumers	4	4	16	Require all enforcement work to be undertaken by one officer coupled with sufficient training and management

Prob = Probability, Imp = Impact, Score range is Low = 1, High = 5

Overall the risk of agreeing with the recommendations outweighs the risks of not agreeing them and is considered acceptable.

5.0 FINANCIAL IMPLICATIONS:

5.1 There are no financial implications.

6.0 LEGAL IMPLICATIONS:

6.1 a) The Local Authority has a duty under section 77 of the Water Industry Act 1991 to keep themselves informed about the wholesomeness and sufficiency of water supplies provided to premises in their area, including every private water supply. The Local Authority must:-

- i) undertake risk assessments of all private water supplies, except those serving a single dwelling where no commercial activity is undertaken;
- ii) take samples and arrange for their analysis;
- iii) investigate any sample failures;
- iv) serve notices where there is a potential danger to human health;
- v) enforce those notices.

b) The Local Authority also has the power to:-

- i) acquire information about water quality and sufficiency;
- ii) serve notices on supply owners where the water is unwholesome or insufficient;
- iii) recover the costs of any enforcement action;
- iv) enter any premises at all reasonable hours to determine whether there have been any contraventions.

7.0 RECOMMENDATION:

7.1 That the Council is recommended to adopt the attached Water Supplies Enforcement Policy.

DAVID GOODWIN

Background papers: Water Industry Act 1991
Private Water Supplies Regulations 2009
Water Supply (Water Quality) Regulations 2010
Private Water Supplies Technical manual (as amended Oct 2010)
Regulators' Code. BRDO. July 2013

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HAMBLETON DISTRICT COUNCIL
ENVIRONMENTAL HEALTH SERVICE

WATER SUPPLIES ENFORCEMENT POLICY

W.D.4.

Date of issue:

Version Control

<i>Version No.</i>	<i>Amended by</i>	<i>Date</i>
1.0	Maria Bentley	20/08/12
2.0	Philip Mepham	21/12/2012
3.0	Philip Mepham	26/2/2013
3.1	Philip Mepham	6/6/2013

1.0 Introduction

1.1 Hambleton District Council is an enforcement authority in relation to Private Water Supplies and has powers and duties under the Water Industries Act 1991 and the Private Water Supplies Regulations 2009.

1.2 This enforcement policy builds on the overall Environmental Health Enforcement Strategy and Policy and explains its interpretation in relation to Private Water Supplies.

1.3 This policy applies to all aspects of the Public Water Supplies and Private Water Supplies and Private Distribution Networks within the Hambleton District Council area.

1.4 Definitions

Public Water Supply – is the water supplied and distributed by a water undertaker (Water Company) or licensed water supplier. The water is treated prior to distribution. This is termed “mains supply”

Private Water Supplies - is any water supply which is not provided by a water company. It is not a "mains" supply. The source of the supply may be a well, borehole, spring, stream, river, lake or pond. The supply may serve just one property or several properties through a network of pipes and may be used for domestic and/or commercial purposes.

Private Distribution Network – Is where a public water supply is further distributed by a person other than water undertaker (Water company) or licensed water supplier.

2.0 Relevant Documents

- Water Industry Act 1991
- The Private Water Supplies Regulations 2009
- Water Supply (Water Quality) Regulations 2010
- The Private Water Supplies Technical Manual (as amended Oct 2010)
- Private Water Supplies: Technical Manual

3.0 Responsibility

3.1 All authorised officers are responsible for compliance with this policy in relation to the use of their enforcement powers.

4.0 The Water Supplies Enforcement Policy Statement

4.1 The policy of Hambleton District Council is to take all necessary steps to ensure that water intended for human consumption is wholesome and does not represent a risk to human health. This includes Public and Private water supplies and water supplied through Private Distribution Networks. The service is provided by the Environmental Health Service.

- 4.2 The Environmental Health Service will ensure that Authorised Officers, who enforce the legislation, are adequately trained and experienced. They will liaise with all relevant bodies to help ensure the efficient enforcement of the water supply legislation. Where appropriate, the Service will also call upon the expertise of others to assist the process.
- 4.3 In order to implement this policy, the Environmental Health Service will:-
- a) undertake risk assessments of all relevant private water supplies and private distribution systems within a 5 year programme;
 - b) prepare and make available, to all involved, material explaining the provisions of the law and conditions so as to promote a better understanding of the law and greater compliance with the various requirements;
 - c) sample private water supply in premises and private distribution networks and carry out such enquiries as are required to determine the quality and sufficiency of supplies;
 - d) carry out investigations into complaints about the quality of private water supplies and private distribution systems;
 - e) monitor records of public water supplies and action taken by water undertakers in relation to public water supplies;
 - f) work with water undertakers and private water supply owners to ensure, so far as is possible, security of water supplies in the event of an emergency;
 - g) include references to quality and sufficiency of water supplies within the Environmental Health Service Annual Reports.
- 4.4 This policy is subject to annual review and at any other relevant time when circumstances require its amendment.

5.0 Authorisations and Delegations

- 5.1 Decisions about public water, private water supplies and private distribution systems enforcement are delegated to officers of the Council as follows:-

5.1.1 Environmental Health Manager

- appointment and/or authorisation of officers to exercise statutory functions
- exercise of powers of entry
- service of notices, exercise of powers in default and recovery of expenses
- in consultation with the Council's Legal Officers, the institution of legal proceedings,
- following consultation with the Health Protection Unit, to issue an authorisation that drinking water can be supplied at a lower standard whilst remedial works are conducted.

In consultation with the Director of Leisure and Health Services.

N.B. In the absence of the Environmental Health Manager (EHM), the duty will be undertaken by the Environmental Health Team Leader.

5.1.2 Council's Legal Officer

On behalf of the Council, to institute legal proceedings in respect of any offence under any legislation, including byelaws, which the Council is empowered to enforce in relation to private water supplies.

5.1.3 Authorised Officers

All Environmental Health Officers and Technical Officers who are suitably qualified and experienced are authorised to conduct Risk Assessments of Private Water Supplies and Private Distribution Systems.

6.0 Public Water Supplies

- 6.1 The Drinking Water Inspector (DWI) is the enforcement agency for Public Water Supplies. In Hambleton the companies supplying the public water supply are Yorkshire Water and Northumbrian Water (the companies).
- 6.2. The companies have a duty to notify the DWI and, under regulation 35 of the Water Supply (Water Quality) Regulations 2010, the Local Authority, as soon as possible, of any event which gives rise to a significant risk to human health.
- 6.3 On receipt of such a notification the Local Authority will assure themselves that appropriate action is taken to ensure the public is aware of the issue and that appropriate corrective actions have been put in place to ensure the water supplied is of an acceptable quality.
- 6.4 Where a public water supply provided to premises is used for domestic purposes but is insufficient or unwholesome such as to cause a danger to life or health, the Local Authority must require the water undertaker to provide a supply of water to those premises otherwise than in pipes.
- 6.5 If water for domestic purposes has been cut off in tenanted domestic premises for any reason, action can be taken by the Local Authority under the Housing Act 2004 to restore the supply. Water undertakers will not normally cut off the supplies for domestic purposes.
- 6.6 If water provided for commercial purposes is cut off for any reason, the Local Authority will be notified by the Water Undertaker. The Local Authority will then investigate and take any necessary action to prevent risk to human health resulting from activities at those premises.
- 6.7 The Local Authority maintains a working relationship with both water undertakers through regular written and telephone communication, annual liaison meetings and during the investigation of water quality events.
- 6.8 The Local Authority is able to monitor water company performance through Annual Reports produced by the Drinking Water Inspectorate.

7.0 Private Water Supplies and Private Distribution Systems

7.1 The Council is the enforcement authority for Private Water Supplies and Private Distribution Networks.

8.0 Taking of samples

8.1. Samples may be procured by Environmental Health Officers and Technical Officers who are suitably qualified and experienced and who are authorised to exercise the powers and duties contained in the Private Water Supplies Regulations 2009

8.2. Powers of Entry - Environmental Health Officers and Technical Officers, who are suitably qualified and experienced, are authorised to exercise the powers of entry contained in the Water Industry Act 1991 Section 84 (1). Where that right is obstructed, a Local Authority may apply for a warrant to secure entry.

9.0 Enforcement

9.1 When determining water enforcement options, our Policy is to give paramount consideration to the protection of public health and safety and in determining this it will be necessary to:

- i. Identify Hazards and Assess Risks
- ii. Assess management effectiveness
- iii. Identify contravention of relevant legislation and have regard to Codes of Practice, enforcement-related correspondence from the Drinking Water Inspectorate, Communities of Practice, and other government guidelines.

9.2 All available steps shall be taken to ensure consistent, balanced and fair enforcement.

9.3 Where differences in application of legislation are not resolved between the Authorised Officer and the regulated entity, it will be the responsibility of the Lead Officer (Commercial) to resolve the matter. In the event of failure to resolve the difference, the matter will be referred to the Environmental Health Manager or, in their absence, the Environmental Health Team Leader.

9.4 When inconsistencies cannot be resolved by the EHTL or EHM they should be referred to the North Yorkshire Water Liaison Group for their consideration.

10.0 The Enforcement Options

10.1 All enforcement action will be in accordance with the flow chart shown in Appendix One. After having due regard to all relevant information and evidence, the following enforcement options will be considered.

- a) To take no action
- b) To take informal action

- c) To take action to avoid using the water for specific purposes
- d) To issue a "Boil Water" notice
- e) To issue and authorisation
- f) To serve notices to improve or close a supply
- g) To prosecute
- h) To undertake work in default

11.0 No Action

11.1 This course of action is only considered appropriate where, in the officer's opinion, all relevant statutes and guidelines are satisfactorily complied with and there is no evidence of sample failures.

12.0 Informal Action

12.1 Informal action is the first enforcement action to be considered by an officer where the water is unwholesome but not a potential danger to human health.

12.2 Informal action is action which will, in the officer's opinion, secure compliance with legislation by offering advice, issuing verbal warnings, the issue of letters and risk assessment reports.

12.3 Officers may recommend informal action where:

- a) The risk to human health is not serious enough to warrant formal action. (Low or Medium as defined on the DWI Risk Assessment Tool)
- b) The previous record of the supply is such that it would be reasonable to expect compliance when informal action is taken.
- c) Confidence in the supply's management is high.
- d) The risk to public health as a result of non compliance is not significant.
- e) The action is part of an ongoing project to improve standards.
- f) The supply is for a single domestic dwelling.

12.4 At the conclusion of every visit or investigation the officer will discuss the result of the visit or investigation with the Person in control/Relevant Person for the supply.

12.5 When taking informal action the officer will:

- a) Give all the necessary information to enable all relevant person(s) to understand what is required to remedy the situation and why the action is necessary.
- b) Indicate that any other means that achieve the objectives of compliance will be equally acceptable.
- c) Clearly differentiate between legal requirements and recommendations of good practice in any report or correspondence.
- d) Arrange to carry out follow-up visits to the supply to monitor compliance and, where necessary, steps to confirm compliance. The timing of these visits will be determined by the significance of the breaches and should, wherever possible, be carried out by the original inspecting officer.

13.0 Statutory Action

13.1 The service of Notices will be considered when an officer is satisfied that the same effect could not be achieved by informal means or where there is a potential danger to human health. Two alternative enforcement options can be used in relation to private water supplies and private distribution systems:-

- 1) If there is a potential danger to human health the Local Authority must:-
 - a) inform consumers and give advice to enable them to minimise the danger;
 - b) serve a notice under Regulation 18 of the Private Water Supplies Regulations 2009 requiring prohibition or restriction of the use of the supply and specifying what other action is necessary to protect human health;
 - c) inform consumers of the notice and provide any additional and necessary advice;
 - d) investigate the cause of the failure.

- 2) If there is not a potential danger to human health, the Local Authority must:-
 - a) investigate the cause of the failure;
 - b) negotiate informally with the relevant person to obtain agreement in carrying out improvements; and
 - c) either
 - i) grant a relaxation for a lower standard on condition works are carried out within 3 years; or
 - ii) may serve a notice under section 80 of the Water Industry Act 1991 requiring works to be carried out within a specified period, not less than 28 days.

- 3) If insufficient information is available to make that judgement, the Environmental Health Service will carry out investigations in consultation with Public Health England to determine whether there is a danger to human health and the cause of the failure.

- 4) If the fault is within a single dwelling this information will be passed to consumers and suitable advice offered.

13.2 In using Notices, due regard will be taken of the Water Industry Act 1991, The Private Water Supplies Regulations 2009, DWI Guidance, Communities of Practice for the public sector and PACE procedures.

13.3 Notices would be considered by officers when:

- a) The water is unwholesome and there is potential danger to human health
- b) There are significant risks to health
- c) There is a Very High or High Risk identified on the Risk Assessment
- d) There is a lack of confidence in the ability or will of the relevant person or person in control to respond to informal action.
- e) There is previous history of non compliance with informal action.
- f) Standards are generally poor and there is low management awareness.

- 13.4 Notices served under Section 80 of the Water Industry Act 1991 or Regulation 18 of the Private Water Supplies Regulations 2009 will be signed by an authorised officer.
- 13.5 When serving Notices officers will set realistic time limits after discussing these limits with the relevant person(s). The timescale will vary according to the type of work needed, the number of people exposed to the risk and the likelihood of water being consumed by non-residents or used for commercial purposes.
- 13.6 Failure to comply with a Notice will generally result in Legal Proceedings being implemented.
- 13.7 Officers must have obtained sufficient evidence to satisfy the court and also be satisfied that such proceedings would not be jeopardised by any omission or failure in procedure or evidence gathering.

14. Works in Default

- 14.1 The decision to carry out works in default is a serious matter and will only be considered after consultation with the Environmental Health Team Leader or EHM. The case and the available evidence would be discussed with the Council's Legal Officer prior to any decision being made.
- 14.2 The relevant criteria to be considered by officers when work in default is being considered are one or both of the following:
- a) Where the offence involves a failure either in full or in part with the requirements of a statutory notice.
 - b) Where all opportunities for appeal against the notice have expired.

15.0 Prosecution

- 15.1 The decision to prosecute is a serious matter and will only be considered after consultation with the Environmental Health Team Leader or EHM. The case and the available evidence would be discussed with the Council's Legal Officer prior to any decision being made regarding the institution of legal proceedings
- 15.2 The relevant criteria to be considered by officers when prosecution is being contemplated are one or more of the following:
- a) Where the offence involves a failure either in full or in part with the requirements of a statutory notice.
 - b) Wilfull obstruction of an officer in possession of a warrant to secure entry to the premises.
- 15.3 Before a prosecution proceeds the EHM or Environmental Health Team Leader must be satisfied (by the authorised officer) that there is relevant, admissible, substantiated and reliable evidence that the offence has been committed by an identifiable body.

- 15.4 The criteria for making that decision are contained within the Environmental Health Service Enforcement Strategy and Policy
- 15.5 Once the decision to prosecute has been taken the matter and all relevant documents will be referred to the Council's Legal Officer without delay.
- 15.6 Any departure from the policy will be considered by the Lead Officer and the reason for the departure recorded.
- 15.7 The responsible person has a right of appeal to a Magistrates' Court against the service of a notice.

Action in the event of failure

