

**2013 No. 301**

**WATER INDUSTRY, ENGLAND**

**The Water Fluoridation (Proposals and Consultation) (England)  
Regulations 2013**

<i>Made</i>	<i>13th February 2013</i>
<i>Laid before Parliament</i>	<i>19th February 2013</i>
<i>Coming into force - -</i>	<i>1st April 2013</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 88D(4), 88E(2) and (6), 88F(4)(d), 88I(4) and (6), 88K(6), 88L(2), (4) and (8), 88M(4), 88O(1), (2) and (4) and 213(2) of the Water Industry Act 1991(a):

**Citation and commencement**

1. These Regulations may be cited as The Water Fluoridation (Proposals and Consultation) (England) Regulations 2013 and come into force on 1st April 2013.

**Interpretation**

2.—(1) In these Regulations—

“the 1991 Act” means the Water Industry Act 1991;

“joint committee” means, except in regulation 20(2)—

- (a) in relation to the exercise of any of the fluoridation functions(b), a committee or sub-committee of a description specified in section 88F(2)(a) or (b) or section 88F(3) of the 1991 Act which is subject to arrangements to exercise the fluoridation functions or which has been established to exercise the fluoridation functions,
- (b) in relation to the exercise of any of the relevant functions(c), a committee or sub-committee of a description specified in section 88M(2)(a) or (b) or section 88M(5) of the 1991 Act which is subject to arrangements to exercise the relevant functions or which has been established to exercise the relevant functions, or
- (c) in relation to the exercise of any of the maintenance functions, a committee or sub-committee of a description specified in regulation 20(2) or (3) which is subject to arrangements to exercise the maintenance functions or which has been established to exercise the maintenance functions;

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(a) 1991 c.56. Sections 88D, 88E, 88F, 88I, 88K, 88L, 88M and 88O are inserted by section 36 of the Health and Social Care Act 2012 (c.7) (“the 2012 Act”). There are no relevant amendments to section 213(2) of the Water Industry Act 1991 (“the 1991 Act”). See section 219(1) of the 1991 Act for the meaning of “prescribed”. These Regulations relate to proposals to fluoridate drinking water in England – see section 88B of the 1991 Act, as inserted by section 36 of the 2012 Act.

(b) See section 88F(1) of the 1991 Act for the meaning of “the fluoridation functions”, which are functions exercisable under or by virtue of section 88E(2) to (5) of the 1991 Act.

(c) See section 88M(1) of the 1991 Act for the meaning of “the relevant functions”, which are functions exercisable under or by virtue of section 88L(2) to (7) of the 1991 Act.

“maintenance functions” means the functions which are required to be exercised in relation to section 87(1) arrangements under regulation 19;

“section 87(1) arrangements” are arrangements entered into by the water undertaker(a) under section 87(1) of the 1991 Act (fluoridation of water supplies at request of relevant authorities)(b).

(2) References in these Regulations to individuals who would be affected by—

- (a) a fluoridation proposal(c), are to individuals who reside within an area specified in the proposal; and
- (b) a variation or termination proposal, are—
  - (i) to individuals who reside within the area specified in the section 87(1) arrangements in relation to which the proposal is made, and
  - (ii) in the case of a variation proposal for the variation of the area specified in the section 87(1) arrangements, to individuals who would reside within the area specified in the arrangements if the variation were made.

(3) Any reference in these Regulations to individuals affected by section 87(1) arrangements is a reference to individuals who reside within the area specified in the arrangements.

(4) Any reference in these Regulations to a local authority affected by section 87(1) arrangements is a reference to a local authority whose area includes, coincides with or is wholly or partly within the area specified in the arrangements.

#### **Further steps in relation to fluoridation proposal requiring notification to other local authorities**

3.—(1) This regulation applies where a proposer(d) is required by virtue of section 88D(3) of the 1991 Act (additional requirements where other local authorities affected) to make arrangements for enabling the local authorities(e) affected by the proposer’s fluoridation proposal(f) to decide whether further steps should be taken in relation to the proposal.

(2) The proposer must notify in writing each of the other local authorities affected by the fluoridation proposal that the proposer wishes to take further steps in relation to the proposal and the notification must be made in accordance with paragraph (3).

(3) The proposer must in relation to each of the other local authorities affected by the fluoridation proposal—

- (a) make available a document setting out the proposal;
- (b) give an assessment of the number of individuals who would be affected by the proposal who are resident in each affected authority’s area;
- (c) give its reasons for making the fluoridation proposal; and
- (d) having consulted the Secretary of State and each water undertaker as required by section 88C(2) and (3) of the 1991 Act (initial consultation etc. on fluoridation proposal)(g), make available the opinion of the Secretary of State and each water undertaker as to whether the arrangements which would result from implementing the proposal would be operable and efficient.

(4) The proposer must make available such other information as any local authority affected by the fluoridation proposal may reasonably request in relation to the proposal.

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(a) See section 6(1) of the 1991 Act for the meaning of “water undertaker” in relation to a company appointed by the Secretary of State to be the water undertaker for an area of England. Section 6(1) is amended by section 36(2) of the Water Act 2003 (c.37). See section 6(2) of the 1991 Act for further provision as to how enactments or subordinate legislation authorising or requiring anything to be done in relation to a water undertaker should be construed.

(b) Section 87(1) is substituted by section 58(1) and (2) of the Water Act 2003.

(c) See section 88B(2) of the 1991 Act for the meaning of “fluoridation proposal”.

(d) See section 88B(5) of the 1991 Act for the meaning of “proposer” in relation to a fluoridation proposal.

(e) See section 87(7B) of the 1991 Act for the meaning of “local authority”.

(f) See section 88B(6) of the 1991 Act for the meaning of a reference to a local authority affected by a fluoridation proposal.

(g) Section 88C is inserted by section 36 of the 2012 Act.

(5) Each local authority notified in accordance with paragraph (2) may, within three months of the date on which written notification of the proposal was received, notify the proposer whether it is in favour of further steps being taken in relation to the proposal.

(6) In any case where a local authority notified under paragraph(2) does not make a notification to the proposer within the period specified in paragraph (5), that authority is to be taken to have withdrawn from the decision whether further steps should be taken in relation to the proposal.

(7) Where any local authority notifies the proposer under paragraph (5) that it is not in favour of further steps being taken in relation to the proposal, the decision whether to take further steps must be determined by the proposer in accordance with regulation 4.

#### **Decision to take further steps in relation to fluoridation proposal**

4.—(1) Each local authority affected by the fluoridation proposal is to be allocated a number of percentage points based on the proportion of individuals who would be affected by the fluoridation proposal who are resident in its area, in accordance with the formula in paragraph 1 of the Schedule.

(2) The local authorities affected by the fluoridation proposal may not take further steps in relation to the fluoridation proposal unless 67 per cent or more of the combined total of the percentage points allocated under paragraph (1) are allocated to authorities in favour of the decision to take further steps in relation to the proposal.

(3) For the purposes of paragraph (1) and paragraph 1 of the Schedule any authority which is taken to have withdrawn from the decision under regulation 3(6) is not to be counted as a local authority affected by the proposal.

(4) For the purposes of paragraph (2), the proposer is to be taken to be in favour of the decision.

#### **Consultation in relation to a fluoridation proposal**

5.—(1) For the purposes of section 88E(2) of the 1991 Act (consulting and ascertaining opinion on fluoridation proposals), the proposer or the joint committee (as the case may be) must take the following steps to consult and ascertain opinion in relation to a fluoridation proposal.

(2) The proposer or the joint committee must publish details of the fluoridation proposal and the steps it proposes to take in relation to that proposal—

- (a) in one or more newspapers circulating within the area to which the proposal relates, and
- (b) in such other media accessible within that area as is considered appropriate for the purpose of bring the proposal to the attention of individuals affected and bodies with an interest.

(3) The details published under paragraph (2) must include—

- (a) the nature of the steps which it is proposed to take;
- (b) the reasons for the fluoridation proposal;
- (c) the area affected by the fluoridation proposal;
- (d) the manner in which individuals who would be affected by the proposal and bodies with an interest can make representations regarding the proposal; and
- (e) the period, being a period of not less than three months from the date on which the details are first published, within which representations can be made.

#### **Decision-making in relation to a fluoridation proposal**

6. When deciding under section 88E(5) of the 1991 Act whether to request the Secretary of State to make such requests under section 87(1) of the 1991 Act as are necessary to implement a fluoridation proposal the proposer or joint committee (as the case may be) must—

- (a) have regard to any representations made in relation to the fluoridation proposal in response to the consultation pursuant to regulation 5 with a view to assessing—

- (i) the extent of support for the proposal, and
  - (ii) the strength of any scientific evidence or ethical arguments advanced in relation to the proposal;
- (b) have regard to—
- (i) any assessment of relevant needs prepared under section 116 of the Local Government and Public Involvement in Health Act 2007 (health and social care: joint strategic needs assessments)(a) in relation to the area of a local authority affected by the proposal, and
  - (ii) any joint health and wellbeing strategy published under section 116A of the Local Government and Public Involvement in Health Act 2007 (health and social care: joint health and wellbeing strategies)(b) by such a local authority;
- (c) consider the capital and operating costs which are likely to be incurred in giving effect to such arrangements as are specified in the proposal; and
- (d) consider any other available scientific evidence in relation to the proposal, including any evidence of benefit to the health and wellbeing of individuals who would be affected by the proposal.

### **Voting by a joint committee on fluoridation proposal**

7.—(1) Where, in the case of a joint committee exercising the fluoridation functions under section 88E(5) of the 1991 Act, the committee cannot unanimously agree the decision as to whether to request the Secretary of State to make such requests as are necessary to implement the fluoridation proposal (“the decision to implement the fluoridation proposal”), the procedure specified in this regulation is to apply.

(2) The joint committee must vote on the decision to implement the fluoridation proposal in accordance with paragraphs (3) and (4).

(3) The joint committee is to be deemed to have voted in favour of the decision to implement the fluoridation proposal where there is a majority vote of 67 per cent or more in favour of the decision.

(4) For the purposes of paragraph (3)—

- (a) each local authority affected by the proposal is entitled to vote;
- (b) each local authority entitled to vote is to be allocated a number of percentage points based on the proportion of individuals who would be affected by the fluoridation proposal who are resident in its area in accordance with the formula in paragraph 2 of the Schedule;
- (c) there is a majority vote of 67 per cent or more in favour of the decision to implement the fluoridation proposal where the combined total of percentage points for those authorities in favour of the decision equates to 67 per cent or more of the total points allocated.

### **Notification of the fluoridation decision to Secretary of State**

8. The proposer or joint committee (as the case may be) must, having decided whether to request the Secretary of State to make such requests under section 87(1) of the 1991 Act as are necessary to implement the fluoridation proposal, notify the Secretary of State in writing of its decision.

### **Further steps in relation to a variation or termination proposal requiring notification to other local authorities**

9.—(1) This regulation applies where a proposer(c) is required by virtue of section 88K(3) of the 1991 Act (additional requirements where other local authorities affected) to make arrangements

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(a) 2007 c.28. Section 116 is amended by section 192 of the 2012 Act.

(b) Section 116A is inserted by section 193 of the 2012 Act.

(c) See section 88I(7) of the 1991 Act for the meaning of “proposer” in relation to a variation or termination proposal.

for enabling the local authorities affected by a variation or termination proposal(a) to decide whether further steps should be taken in relation to that variation or termination proposal.

(2) The proposer must notify in writing each of the other local authorities affected by the variation or termination proposal that the proposer wishes to take further steps in relation to the proposal and the notification must be made in accordance with paragraph (3).

(3) The proposer must in relation to each of the other local authorities affected by the variation or termination proposal—

- (a) make available a document setting out the proposal;
- (b) give an assessment of the number of individuals who would be affected by the proposal who are resident in each affected authority's area;
- (c) give its reasons for making the variation or termination proposal;
- (d) in the case of a variation proposal, having consulted the Secretary of State and the water undertaker as required by section 88J(2) of the 1991 Act (initial consultation etc. on variation or termination proposal)(b), make available the opinion of the Secretary of State and the water undertaker as to whether the arrangements as varied in accordance with the proposal would be operable and efficient; and
- (e) in the case of a termination proposal, having consulted the Secretary of State and the water undertaker as required by section 88J(3) of the 1991 Act, make available the opinion of the Secretary of State and the water undertaker as to whether it would be reasonably practicable to terminate the arrangements.

(4) The proposer must make available such other information as any local authority affected by the variation or termination proposal may reasonably request in relation to the proposal.

(5) Each local authority notified in accordance with paragraph (2) may, within three months of the date on which written notification of the proposal was received, notify the proposer whether it is in favour of further steps being taken in relation to the proposal.

(6) In any case where a local authority notified in accordance with paragraph (2) does not make a notification to the proposer within the period specified in paragraph (5), that authority shall be taken to have withdrawn from the decision as to whether further steps should be taken in relation to the proposal.

(7) Where any local authority notifies the proposer under paragraph (5) that it is not in favour of further steps being taken in relation to the proposal, the decision whether to take further steps must be determined by the proposer in accordance with regulation 10.

### **Decision to take further steps in relation to variation or termination proposal**

**10.—**(1) Each local authority affected by the variation or termination proposal is to be allocated a number of percentage points based on the proportion of individuals who would be affected by the fluoridation proposal who are resident in its area, in accordance with the formula in paragraph 3 of the Schedule.

(2) The local authorities affected by the variation or termination proposal may not take further steps in relation to the proposal unless 67 per cent or more of the combined total of the percentage points allocated under paragraph (1) are allocated to authorities in favour of the decision to take further steps in relation to the proposal.

(3) For the purposes of paragraph (1) and paragraph 3 of the Schedule, any authority which is taken to have withdrawn from the decision under regulation 9(6) is not to be counted as a local authority affected by the proposal.

(4) For the purposes of paragraph (2), the proposer is to be taken to be in favour of the decision.

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(a) See section 88I(1) of the 1991 Act for the meaning of "a variation proposal", section 88I(2) of that Act for the meaning of "a termination proposal" and section 88I(8) and (9) for the meaning of a reference to a local authority affected by a variation or termination proposal.

(b) Section 88J is inserted by section 36 of the 2012 Act.

### **Consultation in relation to a variation or termination proposal**

**11.**—(1) Subject to regulation 15, for the purposes of section 88L(2) of the 1991 Act (consulting and ascertaining opinion on variation or termination proposals), the proposer or the joint committee (as the case may be) must take the following steps to consult and ascertain opinion in relation to a variation or termination proposal.

(2) The proposer or the joint committee must publish details of the variation or termination proposal and the steps it proposes to take in relation to that proposal—

- (a) in one or more newspapers circulating within the area to which the proposal relates, and
- (b) in such other media accessible within that area as is considered appropriate for the purpose of bring the proposal to the attention of individuals affected and bodies with an interest.

(3) The details published under paragraph (2) must include—

- (a) the nature of the steps which it is proposed to take;
- (b) the reasons for the variation or termination proposal;
- (c) the area affected by the variation or termination proposal;
- (d) the manner in which individuals who would be affected by the proposal and bodies with an interest can make representations regarding the proposal; and
- (e) the period, being a period of not less than three months from the date on which the details are first published, within which representations can be made.

### **Decision-making in relation to a variation or termination proposal**

**12.** When deciding under section 88L(7) of the 1991 Act whether to request the Secretary of State to request the water undertaker to vary the section 87(1) arrangements or (as the case may be) give notice under section 87C(7) of the 1991 Act (a) to the water undertaker to terminate the arrangements the proposer or joint committee (as the case may be) must—

- (a) have regard to any representations made in relation to the variation or termination proposal in response to the consultation pursuant to regulation 11 with a view to assessing—
  - (i) the extent of support for the proposal, and
  - (ii) the strength of any scientific evidence or ethical arguments advanced in relation to the proposal;
- (b) have regard to—
  - (i) any assessment of relevant needs prepared under section 116 of the Local Government and Public Involvement in Health Act 2007 in relation to the area of a local authority affected by the proposal, and
  - (ii) any joint health and wellbeing strategy published under section 116A of the Local Government and Public Involvement in Health Act 2007 by such a local authority;
- (c) consider—
  - (i) the capital and operating costs which are likely to be incurred in giving effect to such variation of the arrangements as is specified in a variation proposal, or
  - (ii) the decommissioning and associated costs which are likely to be incurred in giving effect to the termination of the arrangements specified in a termination proposal; and
- (d) consider any other available scientific evidence in relation to the variation or termination proposal, including any evidence of benefit to the health and wellbeing of individuals who would be affected by the proposal.

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(a) Section 87C is inserted by section 58(1) and (2) of the Water Act 2003.

### **Voting by a joint committee on a variation or termination proposal**

13.—(1) Where, in the case of a joint committee exercising the relevant functions under section 88L(7) of the 1991 Act, the committee cannot unanimously agree the decision as to whether to request the Secretary of State to request the water undertaker to vary the arrangements or (as the case may be) to give notice to the water undertaker to terminate the arrangements (“the variation or termination decision”), the procedure specified in this regulation is to apply.

(2) The joint committee must vote on the variation or termination decision in accordance with paragraphs (3) and (4).

(3) The joint committee is to be deemed to have voted in favour of the decision where there is a majority vote of 67 per cent or more in favour of the decision.

(4) For the purposes of paragraph (3)—

- (a) each local authority affected by the proposal is entitled to vote;
- (b) each local authority entitled to vote is to be allocated a number of percentage points based on the proportion of individuals who would be affected by the variation or termination proposal who are resident in its area in accordance with the formula in paragraph 4 of the Schedule;
- (c) there is a majority vote of 67 per cent or more in favour of the variation or termination decision where the combined total of percentage points for those authorities in favour of the decision equates to 67 per cent or more of the total points allocated.

### **Notification of the variation or termination decision to Secretary of State**

14. The proposer or joint committee (as the case may be) must, having decided whether to request the Secretary of State to request the water undertaker to vary the arrangements or (as the case may be) to give notice under section 87C(7) to terminate the arrangements, notify the Secretary of State in writing of its decision.

### **Variation proposals not requiring consultation or joint committee procedure**

15.—(1) This regulation applies to a proposal which is a variation proposal where—

- (a) the proposal does not concern the boundary of the area to which the section 87(1) arrangements relate; or
- (b) the proposal does concern the boundary of the area to which the arrangements relate, but the number of houses<sup>(a)</sup> that would be affected by the variation, either by being brought within the area or by being excluded from it, is 20% or less of the number of houses within the area at the time that the proposal is made.

(2) In the case of a proposal which is a variation proposal to which this regulation applies—

- (a) the requirement to consult and ascertain opinion under regulation 11 does not apply in relation to the proposal;
- (b) the duty on local authorities affected by a proposal in section 88M(2) of the 1991 Act (decision-making procedure: exercise of functions by committee) does not apply;
- (c) regulation 12(a) does not apply where the proposer is making its decision under section 88L(7) of the 1991 Act.

### **Termination of fluoridation arrangements without a termination proposal**

16. Section 88I(2) of the 1991 Act (requirement for a termination proposal to be made to Secretary of State) does not apply where—

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(a) See section 219(1) of the 1991 Act for the meaning of “house”.

- (a) the Secretary of State is satisfied that evidence has been identified of a significant risk to health in connection with any section 87(1) arrangements; and
- (b) the Secretary of State is of the opinion that the risk to health identified in that evidence is such that notice should immediately be given to the water undertaker to terminate the arrangements concerned.

**Minimum term between termination proposals**

17.—(1) Where a termination proposal is made in relation to section 87(1) arrangements but those arrangements are not terminated, no further termination proposal may be made in relation to the arrangements until the end of a period of twenty years after the date when that termination proposal was determined.

(2) For the purpose of paragraph (1), a termination proposal is to be deemed to have been determined on the date when the Secretary of State received the notification required under regulation 14 from the proposer or joint committee (as the case may be) of its decision in relation to the termination of the arrangements.

**Maintenance of section 87 arrangements**

18.—(1) The circumstances specified in paragraph (2) are prescribed under section 88O(1) of the 1991 Act (power to make regulations as to maintenance of section 87 arrangements).

(2) The circumstances are that maintaining section 87(1) arrangements would involve the upgrading or replacement of fluoridation plant, otherwise than for the purpose of meeting operational requirements or health and safety standards.

(3) In the circumstances prescribed in paragraph (2), the Secretary of State must notify in writing any local authority affected by the section 87(1) arrangements concerned.

(4) The Secretary of State must in relation to each local authority affected—

- (a) give the reasons why maintaining the arrangements would involve upgrading or replacing fluoridation plant; and
- (b) make available the opinion of the Secretary of State and of the water undertaker as to whether maintaining the arrangements would be operable and efficient.

**Consultation and decision on whether to propose that arrangements be maintained**

19.—(1) Where notification is given by the Secretary of State under regulation 18(3), the authority or authorities so notified must take steps to consult and ascertain opinion as to whether the section 87(1) arrangements should be maintained in accordance with paragraphs (2) and (3).

(2) The local authority or (where regulation 20 applies) the joint committee must publish details concerning the arrangements and its proposal as to the steps which would be necessary to maintain the arrangements—

- (a) in one or more newspapers circulating within the area to which the proposal relates, and
- (b) in such other media accessible within that area as is considered appropriate for the purpose of bring the proposal to the attention of individuals affected and bodies with an interest.

(3) The details published under paragraph (2) must include—

- (a) any reasons for maintaining the arrangements and why so maintaining the arrangements would involve upgrading or replacing fluoridation plant;
- (b) the area affected by the arrangements;
- (c) the manner in which individuals who are affected by the arrangements and bodies with an interest can make representations as to whether the arrangements should be maintained; and



- (d) the period, being a period of not less than three months from the date on which the details are first published, within which representations can be made.

(4) The local authority or (where regulation 20 applies) the joint committee must, after the requirements in paragraphs (2) and (3) have been complied with and the period for representations has ended, decide whether to propose to the Secretary of State that the section 87(1) arrangements be maintained.

#### **Exercise of maintenance functions by a joint committee**

**20.**—(1) This regulation applies in relation to the exercise of maintenance functions where there is more than one local authority affected by the section 87(1) arrangements.

(2) The local authorities affected must—

- (a) arrange for an existing joint committee of the authorities to exercise the maintenance functions;
- (b) establish a joint committee of the authorities for that purpose; or
- (c) arrange for the Health and Wellbeing Boards established by them under section 194 of the Health and Social Care Act 2012 to exercise the maintenance functions.

(3) Where arrangements are made under paragraph (2)(c), the Health and Wellbeing Boards in question must exercise the power conferred by section 198(b) of the Health and Social Care Act 2012 to establish a joint sub-committee of the Boards to exercise the maintenance functions.

#### **Decision-making in relation to maintenance of arrangements**

**21.**—(1) When deciding under regulation 19(4) whether to propose to the Secretary of State that the section 87(1) arrangements be maintained the local authority or joint committee (as the case may be) must—

- (a) have regard to any representations made in response to the consultation pursuant to regulation 19 with a view to assessing—
  - (i) the extent of support for maintaining the arrangements, and
  - (ii) the strength of any scientific evidence or ethical arguments advanced in relation to maintaining the arrangements;
- (b) have regard to—
  - (i) any assessment of relevant needs prepared under section 116 of the Local Government and Public Involvement in Health Act 2007 in relation to the area of a local authority affected, and
  - (ii) any joint health and wellbeing strategy published under section 116A of the Local Government and Public Involvement in Health Act 2007 by such a local authority;
- (c) consider the capital and operating costs which are likely to be incurred in upgrading or replacement of the fluoridation plant as required in order to maintain the arrangements; and
- (d) consider any other available scientific evidence in relation to the proposal, including any evidence of benefit to the health and wellbeing of individuals who would be affected by the proposal.

#### **Voting by a joint committee on maintenance of arrangements**

**22.**—(1) Where, in the case of a joint committee exercising the maintenance functions, the members of the committee cannot unanimously agree the decision as to whether to propose to the Secretary of State that the arrangements be maintained (“the maintenance decision”), the procedure specified in this regulation is to apply.

(2) The joint committee must vote on the maintenance decision in accordance with paragraphs (3) and (4).

(3) The joint committee is to be deemed to have voted in favour of the decision where there is a majority vote of 67 per cent or more in favour of the decision.

(4) For the purposes of paragraph (3)—

- (a) each local authority affected by section 87(1) arrangements is entitled to vote;
- (b) each local authority entitled to vote is to be allocated a number of percentage points based on the proportion of individuals affected by the arrangements who are resident in its area in accordance with the formula in paragraph 5 of the Schedule;
- (c) there is a majority vote of 67 per cent or more in favour of the maintenance decision where the combined total of percentage points for those authorities in favour of the decision equates to 67 per cent or more of the total points allocated.

#### **Notification of the maintenance decision to Secretary of State**

**23.** The local authority or joint committee (as the case may be) must, having decided whether to propose to the Secretary of State that the section 87(1) arrangements concerned should be maintained, notify the Secretary of State in writing of its decision.

#### **Termination of section 87 arrangements**

**24.** The Secretary of State must give notice under section 87C(7) of the 1991 Act to a water undertaker to terminate the section 87(1) arrangements where—

- (a) there has been a consultation and decision pursuant to regulation 19;
- (b) the local authority or joint committee (as the case may be) has decided not to propose to the Secretary of State that the arrangements be maintained and has so notified the Secretary of State under regulation 23; and
- (c) the Secretary of State is satisfied that the requirements imposed by regulations 19 to 22 have been met.

#### **Revocation**

**25.** The Water Fluoridation (Consultation) (England) Regulations 2005<sup>(a)</sup> are revoked.

Signed by the authority of the Secretary of State for Health.

13th February 2013

*Anna Soubry*  
Parliamentary Under-Secretary of State,  
Department of Health

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(a) SI 2005/921.

## SCHEDULE

Ref 4(1), 7(4), 10(1),  
13(4) and 22(4)

### Formulae for calculating percentage points allocated to local authorities

#### **Fluoridation proposal**

1. The number of percentage points allocated to each local authority affected by the fluoridation proposal is to be calculated by the formula—

$$(\text{LA total/combined LA total}) \times 100$$

Where—

LA total is the total number of individuals who would be affected by the fluoridation proposal who are resident in the local authority's area, and

Combined LA total is the combined sum of the LA totals for the local authorities affected by the fluoridation proposal.

2. The number of percentage points allocated to each local authority entitled to vote in the joint committee decision under regulation 7 is to be calculated by the formula—

$$(\text{LA total/combined LA total}) \times 100$$

Where—

LA total is the total number of individuals who would be affected by the fluoridation proposal who are resident in the local authority's area, and

Combined LA total is the combined sum of the LA totals for the local authorities entitled to vote in the joint committee decision under regulation 7.

#### **Variation or termination proposal**

3. The number of percentage points allocated to each local authority affected by the variation or termination proposal is to be calculated by the formula—

$$(\text{LA total/combined LA total}) \times 100$$

Where—

LA total is the total number of individuals who would be affected by the variation or termination proposal who are resident in the local authority's area, and

Combined LA total is the combined sum of the LA totals for the local authorities affected by the variation or termination proposal.

4. The number of percentage points allocated to each local authority entitled to vote in the joint committee decision under regulation 13 is to be calculated by the formula—

$$(\text{LA total/combined LA total}) \times 100$$

Where—

LA total is the total number of individuals who would be affected by the variation or termination proposal who are resident in the local authority's area, and

Combined LA total is the combined sum of the LA total for the local authorities entitled to vote in the joint committee decision under regulation 13.

### **Maintenance of arrangements**

5. The number of percentage points allocated to each local authority entitled to vote in the joint committee decision under regulation 22 is to be calculated by the formula—

$$(\text{LA total}/\text{combined LA total})\times 100$$

Where—

LA total is the total number of individuals who are affected by the arrangements who are resident in the local authority's area, and

Combined LA total is the combined sum of the LA totals for the local authorities entitled to vote.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations supplement the provision for the fluoridation of water supplies which is made under Part 3 of the Water Industry Act 1991 (“the 1991 Act”). They impose procedural requirements on local authorities in the exercise of their functions in relation to the consideration of proposals for new fluoridation schemes, variation or termination of existing fluoridation schemes, or the maintenance of existing fluoridation schemes.

A local authority which makes a fluoridation proposal (a proposer) to increase the fluoride content of water must notify any other local authorities which may be affected by the proposal and give them relevant information to enable them to decide whether to vote in favour of further steps being taken in relation to the proposal (regulation 3). Subject to certain exceptions, the same procedure applies where a local authority makes a variation or termination proposal (regulation 9). In either case, further steps may be taken in relation to the proposal where there is a majority of 67 per cent or more among the authorities affected by the proposal in favour of the decision. The 67 per cent majority is determined in each case by reference to the proportion of individuals who would be affected by the proposal living in the authority’s area, in accordance with the relevant formula in the Schedule.

Part 3 of the Water Industry Act provides that where no other local authorities are affected by the fluoridation proposal or no other authority affected by the proposal wishes to participate in the determination of the proposal, the proposer must carry out a consultation on the fluoridation proposal and must decide whether to request the Secretary of State to implement the fluoridation proposal. Otherwise, the same functions will be exercised by a joint committee of the affected local authorities (see regulation 2 for the definition of a joint committee). The procedure for the proposer or the joint committee (as the case may be) to determine the fluoridation proposal is set out in regulations 5 and 6. The same position under the 1991 Act applies in relation to a variation or termination proposal. Regulations 11 and 12 set out the procedure for the proposer or the joint committee (as the case may be) to determine a variation or termination proposal. The decision made in relation to the fluoridation proposal and the variation or termination proposal respectively must be notified to the Secretary of State (regulations 8 and 14).

The Regulations make provision for the circumstances where there must be consultation on whether to maintain existing arrangements for fluoridation - i.e. where maintaining the scheme would involve upgrading or replacing a fluoridation plant, except where the purpose is to meet operational requirements or health and safety standards (regulation 18). The procedural arrangements for determining whether section 87(1) arrangements should be maintained are similar to the provision which is made under Part 3 of the 1991 Act for fluoridation and variation or termination proposals. The local authorities must consult and ascertain opinion on the proposal and make a decision on whether to propose to the Secretary of State that the arrangements be maintained (regulation 19 and 21). Where there is more than one local authority affected, the authorities must establish joint committee arrangements to carry out the regulation 19 functions (regulation 20). Where the decision is made not to propose that the fluoridation arrangements be maintained, the Secretary of State must give notice to the water undertaker to terminate those arrangements (regulations 23 and 24).

Fluoridation, variation or termination proposals and proposals to maintain section 87(1) arrangements which are determined by joint committee procedure require a majority vote of 67 per cent or more based on the relevant formula in the Schedule (regulations 7, 13 and 22).

Certain exceptions apply to the general procedural arrangements for variation or termination proposals. Regulation 15 provides that where a variation proposal does not concern the boundary of an area to which fluoridation arrangements relate or where it does concern the boundary of the area but the number of houses affected by the variation would be 20 per cent or less of the number of houses within the area, there is no requirement to consult or ascertain opinion under regulation 11 and the duty to establish a joint committee of the affected local authorities does not apply. Regulation 16 provides that, where the Secretary of State is satisfied that a significant risk to health has been identified in connection with the fluoridation of water, he may give notice to the

water undertaker to terminate the arrangements without a termination proposal having been made. The minimum term between the making of termination proposals is twenty years (regulation 17).

The Water Fluoridation (Consultation) (England) Regulations 2005, which made provision for Strategic Health Authorities to exercise functions in relation to the arrangements for fluoridation schemes, are revoked (regulation 25).

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available at <http://transparency.dh.gov.uk/category/transparency/ias/> and is published with the Explanatory Memorandum alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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