

Introduction

This guidance note is intended to assist stakeholders of private water supplies in their understanding of the following:

- The meaning of insufficiency in the context of private water supplies.
- The causes of insufficiency of private water supplies.
- Legislation relating to insufficiency of private water supplies.
- How owners, users, consumers, controllers and those responsible for private water supplies can plan for periods of insufficiency.
- The role and powers of local authorities and water companies when a private water supply is, has or may become, insufficient.
- The role of the Drinking Water Inspectorate (the Inspectorate) when a private water supply is, has, or may become insufficient.
- The process of appeal where a notice has been served by a local authority on a person, persons or an organisation, to enforce remediation of an insufficient private water supply.

Private water supply stakeholders include, but are not limited to, local authorities, water companies, and any [relevant person](#) as defined in section 80 of [The Water Industry Act 1991](#), hereafter referred to as “the Act.”

This guidance is applicable only to private water supplies in the context of the scope of the following regulations, which can be found [here](#) (guidance [here](#)), hereafter referred to as “the Regulations”:

- The Private Water Supplies (England) Regulations 2016.
- The Private Water Supplies (England) (Amendment) Regulations 2018
- The Private Water Supplies (Wales) Regulations 2017

Meaning and causes of insufficiency

The legislation does not define “insufficiency” of a water supply. However, for the purpose of this guidance a private water supply that is insufficient is one that fails to provide enough water for the purposes of human consumption, as defined in regulation 3 of The Private Water Supplies (England) Regulations 2016. This includes all domestic purposes as defined in section 218 of the Act (drinking, washing, cooking, central heating and sanitary purposes). Sanitary purposes include washing, bathing, showering, laundry and toilet flushing.

Periods of insufficiency can arise because of interruption to the normal volume of supply expected. This can arise from challenging weather conditions, for example by drought or severe cold weather, for example, when the source dries up or freezes). Undetected leaks on pipes and or tanks, pipe bursts, pump failure, inadequate supply arrangements



(including unsuitable fittings), and the disconnection both inadvertently or intentionally (maliciously or otherwise), of pipework can also all result in insufficiency. Often a root cause is a lack of technical knowledge in water distribution in what is required to secure a safe and sufficient supply by relevant persons.

Insufficiency can also occur as part of planned maintenance or improvement works on the supply. The duration of these periods will depend on the severity of the problem and therefore the nature and extent of the remedial work required to fix it.

The occurrence or prospect of long-term, or even permanent insufficiency, can result when some or all the component parts of a supply's assets are no longer fit for purpose and are unable to meet the demand placed upon them. This typically arises when a supply deteriorates over time, which can lead to irreversible failure if not addressed. Whilst theoretically assets can be replaced and other alternative supply options may be available to prevent or mitigate this risk, the process to achieve a long-term solution is often hampered by one or more of the following reasons:

- Funding limitations.
- Solution option limitations.
- Changing climate.
- Over abstraction from shared aquifers.
- Disagreements over solution options between the relevant persons.
- Disagreements over responsibilities for the maintenance and management of the supply and any associated ongoing costs.
- A lack of clarity concerning supply ownership.
- Ongoing and often long-standing civil disputes over supply arrangement ownership between relevant persons.
- Legal ambiguities in property deeds or historical agreements, for example those between landowners and their descendants.
- An unwillingness between relevant persons to communicate with each other due to personal differences.
- A lack of willingness by relevant persons to cooperate and engage with the local authority.
- Unsuitable products and materials being sourced and used to mitigate risks by relevant persons (unwittingly or otherwise).

To assist in the prevention of all or some of the above, the Inspectorate advises that, where possible, the relevant persons of shared and community supplies establish agreements (preferably written and legally binding), which set out clear accountabilities and designate responsibilities for the running of the supply, including associated costs. These could include those for managing and implementing contingency arrangements for periods of insufficiency.



Legislation and regulation

The UK recognises a right to water and a right to sanitation as elements of the right to an adequate standard of living¹.

The regulator for private water supplies is the relevant local authority, and its functions in relation to water quality are prescribed in sections 77 to 85 in the Act. Section 80 gives local authorities discretionary powers to serve a notice on one or more relevant person(s) when a private supply is failing, has failed or is likely to fail to provide to any house on those premises a supply of wholesome water that is sufficient for domestic purposes.

A “relevant person” is defined in section 80(7) of the Act, and in practice is the person, or people who the local authority considers to be appropriate in requiring the remediation of deficiencies. When relevant person(s) refute responsibility for any remedial work the Inspectorate advises that any such matter be taken up with legal professionals. The relevant person has a right of appeal to any section 80 notice served on them (see section 80 notice appeal process below).

The Regulations require water to be wholesome and give enforcement powers to local authorities when a supply is considered to present a potential danger to human health. Under the Act, water must be both wholesome *and* sufficient, at all times. Users and other relevant persons are therefore encouraged to proactively make contingency arrangements in readiness of any periods of insufficiency. Where such plans are not in place, local authorities should require their implementation as part of their regulation 6 risk assessments.

Other legislation may be relevant to an individual in order to secure a sufficient supply of wholesome water, which local authorities should be aware of.

For example, where rented accommodation is concerned, the Landlord and Tenant Act 1985 (as amended by the Homes (Fitness for Human Habitation) Act 2018) implies a covenant into a lease agreement that the property will be fit for human habitation at the beginning of a tenancy and throughout. This Act extends to England and Wales, but its practical changes are only for England. Wales has had its own fitness consultation. Also, under the Protection from Eviction Act 1977 a landlord in charge of a private water supply should not deliberately disconnect water to any of their tenants served by that supply in a bid to remove them from the premises.

The Drinking Water Inspectorate

¹ in Article 11 of the International Covenant on Economic, Social and Cultural Rights or ICESCR). The UK Government considers that the right to water entitles everyone to a sufficient amount of water necessary for survival (drinking, cooking and personal hygiene).

The Drinking Water Inspectorate **has no direct enforcement powers** under the Regulations in relation to private water supplies. Its role in relation to private water supplies is to provide technical guidance in the interpretation and implementation of the Regulations in England and Wales. The Chief Inspector of Drinking Water has been appointed to act on the Secretary of State's behalf when objections are made in respect of a section 80 notice, to either confirm, modify or reject a section 80 notice that has been appealed. The Inspectorate is unable to provide legal advice on the resolution of matters relating to insufficiency and their root causes (for example, civil disputes between the parties concerned), or any other matters of a legal nature.

Proactive Planning for Insufficiency

Planning for insufficiency by relevant persons

Relevant person(s) should ensure that clear and achievable documented contingency procedures are in place to mitigate risks when supplies are temporarily interrupted for any reason, for example for periods of drought, planned maintenance work on distribution systems or when reactive unplanned work is necessary.

Procedures should include arrangements for alternative supplies of water. Local authorities should ensure that this documentation is in place through their regulation 6 risk assessments² and five yearly reviews and require their development when missing or deficient. This is particularly important for large supplies and those where the water is consumed as part of a commercial or public activity (regulation 9 supplies). Local authorities may assist the relevant person(s) with their procedures by providing details of recognised providers, or their framework agreement with the local water company.

As a guideline, if a public water supply fails, public water companies are required to plan to supply their customers with alternative supplies of at least 10 litres per person per day for the first 24 hours, and for a prolonged event, 20 litres per person per day.

Additionally, BS 8551 'The Provision and Management of Temporary Water Supplies and Distribution Networks (not including provisions for statutory emergencies)' Code of Practice, contains estimated flow demands for temporary supplies in a wide range of different settings. This Code of Practice also sets out best practice for securing that a temporary supply is wholesome.

When land and property is sold, or ownership/rights transferred, searches can be made that will identify details of any water supply arrangements, for example, through environmental searches, drainage searches or water company searches). To ensure that any deficiencies are made known to those acting for the property purchasers/vendors it is

² with the exception of those private water supplies serving a single domestic dwelling, unless a request has been made to do so



advised that local authorities and water companies when responding to search requests, raise any concerns about sufficiency.

The existence of any informal water supply arrangements in a local authority's region should be prioritised for risk assessment. Appropriate advice should be given to the relevant person(s) to seek professional legal advice to formalise the arrangement or appropriate action taken as a result of the findings of the risk assessment.

Framework agreements between local authorities and water companies

Local authorities are advised to meet with local water companies to identify the local options available for the provision of alternative water supplies in emergency situations, for example, during periods of national drought or extreme flooding.

It is recommended that these discussions should lead to the setting up of framework agreements between local authorities and water companies so that arrangements are in place and available to be called upon immediately when needed. This could include use of a designated standpipe when required, much in the same way that commercial contractors may have arrangements with water companies to draw from their supply, or bottled water, or water in tankers or bowsers. These frameworks should clarify:

1. The type of assistance that is available and the circumstances in which each water company would deploy alternative supply arrangements. This knowledge would allow local authorities to identify gaps in provision that may need to be filled by other means.
2. Any local limitations: for example, a water company may not be able to provide tankers or bowsers but may be able to provide bottled water.
3. Any restrictions on availability and use throughout the year.
4. The cost to provide each arrangement.

Water companies may not always be able to provide an emergency supply of water in bowsers or in bottles (for example, if they have their own emergency on-going such as a burst main). Local authorities are advised to explore alternative arrangements or plans such as with private providers of emergency water supplies) for such potential scenarios as appropriate.

Guidance in the Event of Insufficiency

Contingencies during drought conditions

If a private water supply should become insufficient due to drought conditions, a relevant person(s) should refer to their contingency plan. Where a contingency plan is not yet in place, the relevant person(s) may seek advice from the local authority or the water company, but there is no obligation on either to provide an alternative supply of water



except where the local authority considers the circumstances to pose a danger to life or human health. In this case, the local authority has power to require, if practicable at reasonable cost, the local water company to supply water (by means other than in pipes) for a specified period (for example, a supply of bottled water, or water supplied in tanks or bowsers). In this situation the costs for providing the supply would be recoverable from the relevant person(s) to which the supply is provided.

Options for provision of an emergency supply include:

- Commercial providers of alternative supplies; relevant person(s) can put in place arrangements directly with commercial suppliers. The local authorities can be asked to assist with this process for example where there are multiple stakeholders involved. Arrangements must ensure that the temporary water supply is wholesome by specifying best practice (for example, BS 8551); the local authorities should be able to offer advice in this respect.
- Water company alternative supplies: the provision of alternative supplies by a water company (bottles, tanks or bowsers) where no agreement is in place should be limited to short term unplanned emergencies.

Local authority powers to secure an alternative supply where required

Where no emergency plan exists and the supply is likely to, or has, become insufficient, the local authority can secure a remedy by serving a notice under section 80 of the Act on the relevant person(s). Where a local authority under section 80(3)(a) designates steps to be taken by itself, it can require a person to make payments to the authority in respect of expenses reasonably incurred in taking those steps under section 80(3)(c) It can recover those costs from the relevant person.

Where there is a risk of a supply becoming insufficient on a longer-term basis then under section 79 of the Act, the local authority must require the local water company to provide a wholesome water supply to the premises for a length of time that the local authority specifies. However, this would only apply if:

1. It is not practicable at reasonable cost for the water company to provide a wholesome and sufficient piped supply.
2. the supply of water for domestic purposes is either of insufficient quantity or quality (unwholesome) such that it causes “a danger to life or health”, and
3. It is practicable at reasonable cost for the water company to provide a supply of wholesome water for domestic purposes by means other than pipes (in bottles, tanks, bowsers, etc).

In the above situation, the water company would charge for providing these supplies, which is recoverable from the relevant person(s) to which the supply is provided.

Deliberate disconnection of a private water supply

Where a person in control (or other relevant person) of a private water supply wishes to disconnect users and there is no clear legal agreement in place which allows disconnection of domestic users under specified circumstances, the local authority may serve a notice under section 80 of the Act that requires a supply to continue to be provided. In situations where facts or the existence of any legal obligation are in dispute, local authorities are advised to furnish themselves with any relevant information on the legal situation on a case-by-case basis before serving the notice. A section 85 notice can be served to obtain information from any person if necessary. This may involve the relevant person(s) seeking advice from a property lawyer about easements or covenants that may exist within the Title Register and property deeds.

In accordance with section 80(3)(b) of the Act the notice can specify a reasonable time period for those affected to arrange for alternative supplies and require a continuation of supply in the meantime by the relevant person who intends to disconnect a supply.

Local authorities are advised not to revoke any notice that requires a continuation of a supply served until such time as the parties have confirmed that valid legal agreements have been signed up to and an alternative supply is in place, or a court has determined that there is no private law right to the continuation of supply and appeal rights are exhausted. These documents should be kept on the private water supply record for reference in the event of any future similar dispute arising.

Further information on notices can be found on the Inspectorate's website, [here](#).

Section 80 notice appeals process

Section 80 notices can be appealed by submitting representations or objections with respect to the notice to the local authority. Where this is the case, the notice is submitted by the local authority to the Chief Inspector of the Drinking Water Inspectorate who must confirm (or not) the notice either with or without modifications. The Chief Inspector may cause a local inquiry to be held for the purpose of reaching its decision. The representation or objection may be withdrawn. It is essential that any civil dispute in relation to the supply of water being pursued by involved parties through the courts, is known to the Chief Inspector as part of this process.

In making the decision to confirm with or without modifications a private supply notice, the Chief Inspector must take account of any asserted existing private law right to a supply of water, for example from a neighbouring property. Disputes relating to any private law right should be determined by the Civil Courts before an appeal is made.

Other links

Well Drillers Association
<https://www.welldrillers.org/>



Tel: 07736 364259

Drinking Water Inspectorate

<https://intranet.defra.gov.uk/>

Tel: 030 0068 6400

Local authorities

<https://www.gov.uk/find-local-council>

Ofwat

Guidance on getting a new public water supply connection and associated charges:

<http://www.ofwat.gov.uk/households/supply-and-standards/getting-a-connection/>

Water Regulatory Advisory Scheme

<https://www.wras.co.uk/>