

06 May 2009

**Circular Letter: WSP 4/09**

To: *each Water Services Authority  
(City and County Manager, and Director of Water Services)*

**SECTION 56 WATER SERVICES ACT 2007 – WATER CONSERVATION  
GUIDANCE CIRCULAR**

**INTRODUCTION**

As indicated in Circular Letter WSP 14/07 dated 21 December 2007, the Water Services Act 2007 is being brought into force over a number of stages, via Commencement Order. A Commencement Order under the Act (S.I. No. 528 of 2008) has now been signed by the Minister, bringing Section 56 (Conservation of Water) into force. The Order also repeals Sections 16 and 17 of the Waterworks Clauses Act 1863 which addressed water wastage and included related powers to restrict supplies. These provisions are now consolidated into Section 56.

To facilitate the implementation of Section 56, the Minister has also made the enclosed Water Conservation Regulations 2008 (S.I. No. 527 of 2008). These Regulations prescribe the forms to be used for issuing notices under Section 56, and provide for related procedures and incidental requirements.

Detailed guidance on Section 56 and S.I. No. 527 of 2008 is set out below.

It should be noted that related provisions on conservation of water supplies have already been brought into force by the first Commencement Order under the Act (S.I. No. 846 of 2007), and have been outlined in Circular letter WSP 14/07 dated 21 December 2007. In particular, Section 53 sets out general offence provisions for unauthorised taking of supplies or wastage of water. Section 55(1) prohibits the connection of a premises to a water supply, or otherwise taking a supply (e.g. by connecting to a standpipe), without the agreement of a water services provider.

**SECTION 56 – CONSERVATION OF WATER**

***Overview***

Section 56 of the Act has three main elements:

- *subsections (1) to (13)* provide for the general powers of authorised persons to direct that remedial or corrective action be taken to prevent or reduce water wastage in individual premises ;
- *subsections (14) and (15)* enable the Minister to make Regulations to facilitate the introduction of storm water or grey water recycling;

- *subsections (16) to (24)* make provision for the general application of hosepipe bans and water conservation measures. They also provide for on-the-spot fines in the event of breaches of these measures.

Related definitions are set out in subsection (25). The authorised persons referred to are, in effect, duly appointed officers of each water services authority, in accordance with Section 22 of the Act.

It is intended that Section 56 will apply where wastage occurs due to poor management practices, for example where a school closes for summer holidays leaving urinals to flush automatically in the meantime, or where leakages remain unattended, or where an underlying shortage of water, for example due to drought or other occurrence, necessitates action to conserve overall water supplies. The section complements Section 54, which is already in force, and places a duty of care on each premises owner to ensure that the internal water distribution system in a premises is properly maintained. Section 56 takes a "softer" approach on the consumer initially, and provides for an appeals procedure except in cases of emergency.

### ***Subsections (1) to (13)***

Notices: Subsection (1) provides for the basic power of an authorised person, by notice, to direct the owner or occupier of a premises to take specified corrective action to prevent waste or excessive consumption of water. It is complemented by subsection (2), which enables an authorised person to specify a limit for water consumption for a particular premises. Notices under subsections (1) or (2) may be appealed to the District Court within 1 month under subsections (7) to (9), and where appealed, are enforceable only upon the determination of the Court.

Emergency Notices: Subsection (3) provides for the application of the subsection (2) powers in any emergency situation, where an authorised person considers that there is an immediate risk to human health or the environment or to the integrity of a water supply system. Emergency notices are enforceable with immediate effect, in accordance with subsection (10), and are not subject to appeal.

Issue of Notices: While notices under subsections (1) to (3) would normally be issued to deal with specific problems in an individual premises, subsection (5) provides that, if necessary, they may be issued to specific classes of owners or occupiers, such as a particular trade, industry or business. In practice, it is likely that a requirement for such "bulk" notification will arise only in emergency situations, and subsection (6) therefore enables a water services authority to issue an emergency notice by public notification in local newspapers or broadcast media. Although stated in general terms, it is clearly not intended that subsection (6) would extend to the issue of an emergency notice to an individual owner or occupier and it should not be applied for such purpose.

Restriction of Supply: While failure to comply with a notice is an offence in the first instance under subsection (4) and is subject to a fine of up to €5,000 on summary conviction, subsection (11) also provides that the authorised person who issued the notice may, after issuing a further notice to the relevant owner or occupier, cut off or restrict the water supply to all or part of the particular premises until such time as he or she is satisfied that the notice is complied with.

The issue of a further notice by the authorised officer is intended to serve as a "final warning" and would provide a further opportunity for the recipient to take appropriate action. Such further notices must issue to specific owners or occupiers. Therefore, they should not be issued as a general notification to specified classes of owners or occupiers. The power to restrict supply applies in addition to any other penalty for non-compliance with the original notice and will not prevent any prosecution for non-compliance with the notice should the authorised officer decide to proceed with it in tandem.

Subsection (12) provides that an authorised person will not be liable for any consequences arising from the restriction of a supply in accordance with subsection (11). This provision is intended to protect water services authorities from malicious or vexatious attempts to undermine their powers to cut off or restrict a supply. Nevertheless, water services authorities should ensure that any action taken under subsection (11) does not compromise or place at risk public health.

Application to all water supplies: Section 56 is intended to apply to all water supplies, including water services authority supplies and group water scheme supplies. Subsection (25) defines "water services authority", for the purposes of subsections (1) to (13), as including water supplied jointly with, or on behalf of, a water services authority, or by "an authorised provider of water services" such as a licensed group water services scheme. It is therefore envisaged, that when a group water scheme experiences water conservation related problems which can be addressed using the powers available under Section 56, the water services authority in whose functional area such problems arise will intervene as considered appropriate on behalf of the scheme and will exercise its powers under this section to resolve the situation. Such action complements the general supervisory role exercised by water services authorities in relation to the group water scheme sector.

The term "authorised provider of water services" is defined under Section 2 of the Act in terms of holding a water services licence under Part 6. Until water services licensing is introduced, a group water scheme will not be regarded as a "water services authority" for the purposes of subsections (2) and (3), as it will not be an "authorised provider of water services". Therefore, for the present, intervention on behalf of a group water scheme can only occur under subsection (1), which is couched in general terms without reference to a water services authority. It is expected that water services licensing will be introduced during 2009. Water services authorities should maintain an interest in developments regarding the introduction of water services licensing, so that they are aware when intervention under subsections (2) and (3) on behalf of the group scheme sector also becomes possible.

Please also note that, on the same basis, the immunity provisions of subsection (12), regarding the consequences of an authorised person's restriction of a water supply to a premises from a group water scheme supply, will not extend to the group water scheme until the scheme is duly licensed under the Act. This will not prevent a prosecution being taken for non-compliance with a notice in the meantime.

### ***Subsections (14) and (15)***

Subsection (14) enables the Minister to make regulations in due course to facilitate water conservation generally, and in particular the introduction of storm water or grey

water recycling. Subsection (25) defines grey water as “domestic waste water excluding that which is flushed from a toilet bowl or urinal”. There are no immediate proposals to make such Regulations

### ***Subsection (16) to (24)***

*On-the-spot fines:* While subsections (1) to (13) provide for the application of water conservation controls to individual premises, subsections (16) to (24) provide a mechanism for community-wide application of restrictions on water use in times of water shortage, focusing on specific water usage such as water for swimming pools, gardens etc. To facilitate enforcement, they also provide for the application of a fixed payment notice, commonly known as an “on-the-spot” fines system, for breaches of such restrictions. These provisions are based on similar provisions in the Litter Pollution Act 1997, the application of which is already well established. They may be applied in respect of all water supplies, including those of a group water scheme, with immediate effect. They are intended to provide water services authorities with a ready means of addressing temporary water shortages in their areas, whether seasonal or due to any other cause.

Subsection (16) provides that where a water services authority is of the opinion that a serious shortage of water supplies provided by it or another water services provider exists, or is imminent, in all or part of its functional area, it may make an order to prohibit or restrict the use of water supplies. Typically, this will arise during or following a prolonged period of dry weather but can apply at any time where demand is expected to exceed supply capacity. Such an order must specify the period of its application and may also restrict water usage to certain times of the day or night. An order under subsection (16) may provide for a restriction on activities such as-

- watering a garden,
- watering recreational parks or sports grounds,
- irrigating or spraying crops,
- washing a mechanically propelled vehicle or a trailer,
- provision of a commercial washing service for a vehicle or trailer, or
- filling or replenishing a swimming pool, or artificial pond or lake.

This provision is not intended to provide an outright ban on irrigation. However, during a time of water shortage, it may be appropriate to restrict the irrigation of crops to the evening or night time so that loss through evaporation is minimised and to regulate the rate of water use throughout the day. Restrictions on irrigation and on washing vehicles and trailers apply only to water drawn through a hosepipe or similar pipe or apparatus, for example devices used as lawn sprinklers or power hoses for car washing. It is not considered that water conveyed by buckets or similar containers for such purposes would seriously compromise a water supply.

Subsection (17) obliges a water services authority to provide public notice of its intention to make an order, indicating the period for which the order will remain in force, by advertisement in local newspapers and/or broadcast on local media outlets. While the Minister may in the future specify other mechanisms by which notice may be given, none are envisaged at present.

Subsection (18) provides that it is an offence to contravene an order prohibiting or restricting water use. This will incur a penalty on summary conviction of a fine not exceeding €5,000. However, subsection (22) provides for service of a notice by an authorised officer of the water services authority or a member of An Garda Síochána to the effect that, if the recipient pays a fixed penalty of €125 within 21 days, a prosecution will not be instituted. Related provisions in subsections (19) to (21) set out powers to require the provision of name and address details on request, and the related offence of providing false information, which will incur a penalty on summary conviction of a fine not exceeding €100. Under subsection (23), income from fixed penalty notices, whether issued by an authorised officer or a member of An Garda Síochána, accrues directly to the water services authority. Where a prosecution is taken following issue of a fixed penalty notice, subsection (24) provides that the onus will be on the accused to prove that payment had been duly made in accordance with the terms of the notice if such a defence is to be used.

Notification of An Garda Síochána: Given the involvement of An Garda Síochána in the “on-the-spot fines” process, each water services authority should ensure that arrangements are in place to inform An Garda Síochána in the locality when an order is made under subsection (16) and should provide sufficient copies of the relevant pro-forma notice, as prescribed in S.I No. 527 of 2008, to enable An Garda Síochána to assist as necessary with enforcing the order.

Implementation Records: The “on-the-spot fine” system provided for in Section 56 is intended to facilitate widespread and effective implementation of water-use restriction/prohibition orders. Detailed records should be kept by each water services authority of the application of the system in its functional area, so that data is readily available to measure its effectiveness. At a minimum, each water services authority should keep sufficient data to enable it to provide to the Department, details of –

- the number of fixed penalty notices issued in its functional area in each calendar year,
- a breakdown of the numbers of notices issued by the water services authority and An Garda Síochána,
- the total income received from fixed penalty notices in each calendar year, broken down between the notices issued by the water services authority and An Garda Síochána,
- the number of fixed penalty notices issued in each calendar year which were paid within the 21 day grace period, broken down between those issued by water services authority and An Garda Síochána, and
- the number of fixed penalty notices issued in each calendar year which were progressed to prosecution. In cases where prosecution was not pursued, the reasons for not prosecuting should be recorded and be available for submission to the Department.

With regard to income from fines generally, your attention is drawn to Page 6 of Circular Letter WSP 14/07 dated 21 December 2007 (the 1<sup>st</sup> Guidance Circular on the Act), which outlines the suite of provisions in place to facilitate enforcement of the Act.

Details of the various pro-forma necessary for the application of Section 56 are set out in the guidance on S.I. No. 527 of 2008, below

## **WATER CONSERVATION REGULATIONS 2008 (S.I. NO. 527 OF 2008)**

The Water Conservation Regulations 2008 elaborate on a number of procedural requirements to facilitate the application of Section 56 of the Act and prescribe the various pro-forma to be used in its implementation.

The appropriate pro-forma notices for the application of powers under subsections (1), (2), (3), (11)(a) and (22) of Section 56 are set out in the Schedule to the Regulations. While each form is self-explanatory, the following should be noted:

- Power to issue each form resides with an authorised person, and, in the case of Form E, with a member of An Garda Síochána. To avoid legal challenge to the validity of the notice, care should be taken to ensure that the officer in the water services authority who signs the form is indeed an authorised person, duly appointed in accordance with section 22(1) of the Water Services Act 2007. Section 22(4) of the Act requires a certificate of appointment to be furnished to each authorised person.
- Regulation 3(2) provides that notices may be served with additional documents attached, which will be deemed to be part of the notice. This is intended to facilitate detailed instructions, outline sketches etc. being attached to notices when appropriate.
- A duration for compliance, stated as a specific number of days or weeks rather than a specific date for compliance, should be inserted in Forms A and B. Both notices are subject to appeal and a specified date may otherwise have passed by the time the notice becomes enforceable. The duration stated should be a time period during which a person could reasonably be expected to undertake the measures necessary to comply with the notice.
- Regulation 5 provides that an authorised person may specify actions to be taken under a section 56(2) notice or section 56(3) emergency notice (Forms B and C), and the times during which water supplies may be used. Specific uses of water may also be prohibited, for example the filling of a swimming pool.
- The action which may be required in a section 56(1) notice (Form A) is already specified in the Act. Regulation 8 sets out the quality standards for materials and workmanship with which a person to whom such a notice is addressed must comply.
- Form C complements the provisions in Regulation 4 (Emergency Notice), requiring an authorised person to indicate the duration for which an emergency notice under section 56(3) shall have effect. Regulation 4 requires the authorised person to keep emergency notices under review, and provides for the issue of further emergency notices, as required, at the conclusion of the application period of each such notice.
- As regards Form D, Regulation 7(a) provides that the minimum notice period for restricting or cutting off a supply shall be not less than 7 days, where issue of the notice follows the earlier issue of a notice under subsections (1) or (2) of Section 56. However, where the notice is issued pursuant to an earlier Emergency Notice under subsection (3) of Section 56, Regulation 7(b) provides that the date specified may be as soon as the authorised person considers appropriate. In such emergency circumstances, the notice may specify a particular time on the current day by which compliance is required. A copy of the original notice to which a further Form D notice under section 56(11)(a) refers should be attached to the notice on issue. Please also note that restriction of supply need not necessarily be

applied to an entire premises. It may be appropriate to apply the restriction to the non-domestic part of a premises, if that is feasible.

- When issuing a Form E notice, care should be taken to ensure that a related order under section 56(16) is in existence. Otherwise, the notice has no validity and will not be enforceable.
- It is a matter for Water Services Authorities, when carrying out their functions under Section 56 to ensure that the provisions of the Official Languages Act 2003 are complied with.

#### **CONCLUSION**

The Water Services Act 2007 is already available on the Department's website. The 2<sup>nd</sup> Commencement Order for the Water Services Act and S.I No 527 of 2008 have also been published on the website.

Any queries in relation to this Circular may be addressed to Margaret McHugh (☎ 01 8882166; email: Margaret.McHugh@environ.ie) or Orla Shanahan (☎ 01 8882584; email: orla.shanahan@environ.ie) in Water Services Policy Section, or to the undersigned.

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Copy to - Environmental Protection Agency, ACCC, CCMA (Water Services Sub-Group), NFGWS, NRWSC, WSNTG, AMAI, each Regional Authority, Joint Committee on the Environment, Heritage and Local Government, Ombudsman's Office and Office of the Information Commissioner.