

## **British Fluoridation Society briefing on legal developments 1985 – 2009 relating to water fluoridation in the UK**

Following a challenge in the Scottish courts about the legality of water fluoridation, in 1985, under a Conservative Government, the Water (Fluoridation) Act was passed with cross-party support.

The 1985 Act was subsequently subsumed into the 1991 Water Industry Act (Sections 87 to 91). It **allowed** health authorities to request water undertakers to fluoridate water supplies but **placed no duty on water undertakers to accede** to such requests.

In November 2003 Parliament supported the (Labour) Government's proposal to correct the legislation (in England & Wales) so that water companies were no longer able to veto health authorities' decisions about water fluoridation. Section 58(2) of the [Water Act 2003](#) makes provision for the fluoridation of water supplies at the request of health authorities by inserting a new section for section 87 of the 1991 Act. New Section 87 puts **water undertakers under an obligation to accede to requests from SHAs to enter into arrangements to fluoridate water supplies where an indemnity is provided.**

Under the new legislation:

- PCTs are responsible for considering the dental health of the local population, and whether this might be improved by water fluoridation.
- If a PCT Board approves the principle of water fluoridation, the PCT will ask the Strategic Health Authority (SHA) to undertake cost and feasibility studies to identify a viable and cost-effective potential scheme.
- If such a scheme can be identified and the PCT wishes to proceed, it will then ask the SHA to undertake a public consultation, in which everyone living and working in the area covered by the potential scheme has an opportunity to contribute and make their views known.
- The SHA shall not proceed with fluoridation unless, "having regard to the extent of support for the proposal and the cogency of the arguments advanced, the Authority are **satisfied that the health arguments in favour of proceeding with the proposal outweigh all arguments against proceeding.**"

[Regulations](#) governing the conduct of public consultations and arrangements for indemnity were subsequently debated and approved by both Houses of Parliament, and came into force on 1 April 2005.

### **Regulation 5 states:**

"A Strategic Health Authority shall not proceed with any step regarding fluoridation arrangements that falls within section 89(2) of the Act unless, having regard to the extent of support for the proposal and the cogency of the arguments advanced, the Authority are satisfied that the health arguments in favour of proceeding with the proposal outweigh all arguments against proceeding."

Finally, in September 2005 (updated 5<sup>th</sup> February 2008) the [Department of Health issued Guidance to the NHS](#) in the form of a letter from the Chief Dental Officer that encouraged SHA and PCT Chief Executives and Directors of Public Health to consider water fluoridation to improve the oral health of their populations, and explained how to proceed under the new legal framework.

### **Consultation under 2003 Act**

The first public consultation under the provisions of the 2003 Act was carried out by South Central Strategic Health Authority (SHA). The three month public consultation about a proposal to fluoridate supplies for around 200,000 people living in Southampton and parts of

South West Hampshire closed on 19 December 2008. On 26 February 2009 the Board of the SHA voted unanimously in favour of the proposal. The likely start date is 2010.

The SHA's announcement of its decision, and links to relevant documents can be found on the [SHA's website](#).

Although rather a modest scheme, the success of the Southampton consultation was important as other SHAs in the UK might now be more confident about undertaking similar consultations. We look forward to consultations in the near future on new fluoridation proposals for the large conurbations of the North West of England and Yorkshire.

### **Wales,**

The Water Act 2003 applies in Wales. However, the Regulations governing Consultation and Indemnities that came into effect in England on 1 April 2005, do not apply to Wales. The Water Act 2003 requires the National Assembly for Wales to enact Regulations governing the conduct of public consultations and arrangements for indemnity. Such regulations have not yet been put to the Assembly.

### **Scotland**

The Water Act 2003 does not apply in Scotland.

In Scotland the 1985 Water (Fluoridation) Act, and subsequent guidance issued as NHS Circular No 1991(GEN)16, remain in force. The Act and guidance gives Health Boards the power to decide whether or not to request fluoridation in their area, and sets out the procedure to be followed in using that power. Public consultation is an important part of the process.

Health is among the powers that have been devolved to the Scottish Parliament, and, in a statement to the Scottish Parliament in March 2005 the Deputy Minister for Health and Community, Care, Rhona Brankin, recognised the case for, and the benefits of, fluoridation, and, suggested that NHS boards could undertake consultations and request Scottish Water (a publicly owed utility) to fluoridate supplies. We are not aware of any NHS board in Scotland that is proposing to consult on fluoridation.

### **Northern Ireland**

The Water Act 2003 does not cover Northern Ireland. Legislation enabling fluoridation of the public water supplies in NI was updated in 1987. The Water Order (1987) empowers the Department of the Environment (NI), on application from a Health Board, to fluoridate the water supplied within the area (or part of the area) of that Board. There are currently no water fluoridation schemes in Northern Ireland.

A consultation took place in 1996/7 following which all 4 NI Health Boards requested implementation of the proposed fluoridation schemes. Unfortunately those requests were not implemented, and we are not aware of any plans to introduce fluoridation in Northern Ireland in the foreseeable future.

-----  
British Fluoridation Society  
1-Apr-09