



THE SCOTTISH OFFICE

National Health Service in Scotland Management Executive NHS Circular No 1991(GEN)16

St. Andrew's House
Edinburgh EH1 3DE

Previous Circular No - NHS1985(GEN)31
Cancelled

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General Managers of Health Boards
General Manager of the Common Services Agency
General Manager, State Hospital
General Manager, Health Education Board

Our Ref: NJF/7/3/10

27 June 1991

Dear Sir

GUIDANCE ON FLUORIDATION OF PUBLIC WATER SUPPLIES

Introduction

1. This circular gives guidance to Health Boards on the implementation of schemes to fluoridate public water supplies. The interim guidance issued as NHS Circular No 1985(GEN)31 following the passage of the Water (Fluoridation) Act 1985 is now cancelled.

2. The fluoridation of water supplies constitutes a safe and effective means of reducing tooth decay, though the Government will continue to monitor any further relevant evidence on the safety and effectiveness of fluoridation and will bring any significant new developments to the attention of Health Boards. The Water (Fluoridation) Act 1985 gives Health Boards the power to decide whether or not to apply for fluoridation of water supplies in their area and this circular sets out the procedure to be followed in using that power. It advises Health Boards on points to be taken into account in considering fluoridation schemes and provides a model agreement as a basis for discussion between Health Boards and local authorities in their capacities as water authorities on the terms under which fluoridation may be carried out. Also enclosed for information is a copy of the model form of statutory indemnity which the Secretary of State would offer a water authority entering into an agreement with a Health Board for the purposes of fluoridation of water supplies within the relevant area. (Annex A)

The decision-making process

3. The Government's White Paper "Promoting Better Health" (HMSO Cm 249) published in 1987 reiterated the need for Health Boards to consider the benefits of fluoridation, particularly in areas where the level of dental health was poor. In reaching a view as to the need for fluoridation in their areas, Boards will wish to take into account the advice of the Chief Administrative Dental Officer, the Chief Administrative Medical Officer and the local area dental committee.

4. Because of the complex nature of water supply systems, Boards should investigate with the appropriate water authority the feasibility of fluoridation schemes in their area. The corresponding circular issued today by the Scottish Office Environment Department to water authorities (copy attached), asks them to give all possible co-operation to Health...

Boards, for example, by making available on request an assessment of the technical feasibility and estimated cost of fluoridation and explaining which areas it would be feasible to fluoridate without the scheme being endangered by future water supply strategy. Conversely, the determination of the technical feasibility of fluoridation will be greatly simplified if all Health Boards within a water authority's supply area could co-ordinate their policy decisions on fluoridation and act jointly in their requests to the water authority for fluoridation schemes.

Publicity and consultation

5. Section 4 of the Water (Fluoridation) Act 1985 requires that a process of publicity and consultation be carried out by each Health Board before formal applications for fluoridation are made. Where more than one Health Board is proposing a scheme in the same Regional or Island Council area, the consultation procedure would be simplified if all the Health Boards concerned were to co-ordinate their strategy. In terms of publicity, the Act requires that the proposals must be published in at least one newspaper circulating within the area affected, and then re-published one week later inviting comments by a certain date and giving details as to whom and where they should be sent. Where the newspapers circulate across several Health Board areas and all of the Health Boards plan to participate in the same scheme, each advertisement may cover all of the Health Boards, but should mention them by name, and should provide an address in each Health Board to which representations should be sent. It is important to ensure that the publicity covers all parts of the area to be fluoridated, and the Health Board should use newspapers with the largest circulation in the relevant area.

6. The requirements set out in paragraph 5 above are the statutory minimum which apply. If a Health Board considers it appropriate, any other bodies may be approached, or other means of sounding out local opinion may be used. The aim should be to ensure that no significant section of the population in the area can reasonably complain that they did not have an opportunity to learn about the Board's proposals. The views which emerge from the consultation process must be considered formally by the Health Board, and no legal agreement to implement fluoridation can be made until 3 months after the date when the proposals were first published. By Section 4(7) of the Act the public cannot be excluded from that part of the Board's meeting at which consideration is given to whether the Board should make or withdraw an application for fluoridation.

The role of water authorities

7. If, having considered the views resulting from the consultation procedures, the Health Board decides to proceed with a scheme, it should submit a formal application to the water authority. The Act continues to give water authorities discretion as to whether or not to agree to fluoridation. Though the chief concern of water authorities is likely to be the technical feasibility of water fluoridation, they might reasonably expect the Health Board to explain how the requirements of the Act have been complied with in terms of publicity and consultation. If the water authority agrees to the Health Board's request, both will need to consider the technical and financial plans necessary for implementation of the scheme.

Implementation of schemes

8. The arrangements for implementing fluoridation schemes are a matter for agreement between the Health Board and water authority involved. Agreement must be reached with the water authority on matters such as the monitoring of fluoridation and the financial arrangements between the parties. The Model Agreement at Annex B has been prepared after consultation with the Scottish Office Environment Department and the Convention of Scottish Local Authorities (COSLA). It sets out the principal matters to be taken into account in reaching an agreement and forms a basis for discussion. Modifications may be required, however, to take account of local conditions and views.

9. The Model Agreement notes that there will be circumstances in which the water authority cannot carry out fluoridation as agreed. The Act permits the supply of fluoridated water to non-fluoridated areas only in certain limited circumstances, either in an emergency or when maintenance work is required. If adherence to a fluoridation agreement prevents a water authority from supplying water more efficiently than might otherwise be the case without fluoridation, for instance, by switching water supplies from one zone to another for which fluoridation has not been agreed, then the water authority will seek reimbursement of any ensuing costs from the Health Board. Health Boards should ensure that sufficient advance warning is required of any such potential costs, in order to decide whether to meet the cost or withdraw from the agreement in accordance with paragraph 11 below.

Assistance with Costs

10. Health Boards will be responsible for the revenue costs of fluoridation schemes. However, from financial year 1992-93, the Department will be prepared to consider assistance of up to 60% of capital costs. The application should be made at the stage when the water authority has accepted the formal application for the scheme and before the agreement on implementation has been signed. It should include the following items:-

- (a) size of population to be served;
- (b) Health Boards involved and geographical area covered;
- (c) an indication that the scheme is technically feasible and that the water authority is ready to proceed;
- (d) an estimate of the total installation costs provided by the water authority;
- (e) an estimate of how long the work will take, with estimated costs phased over the required number of months or years. Although applications for central funds cannot be approved until this stage, early warning of likely bids would be most helpful in planning the allocation of funds. Firm bids for any given financial year must be received along with the Board's submission of their capital programmes for that financial year.

The application should be submitted to Mr L C Cunning at the above address.

Termination of fluoridation schemes

11. Should a Health Board wish to terminate a scheme it must comply with the procedures for publicity and consultation required by the Act. These are identical to those described in paragraphs 5 and 6 above for proposals to enter into a fluoridation scheme. A formal application to the water authority giving reasonable notice of withdrawal is a statutory obligation on the Health Board where it is proposed to terminate a fluoridation scheme.

Indemnity provided by the Secretary of State

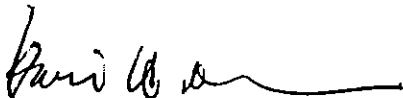
12. The Secretary of State will, in terms of section 172 of the Water Act 1989 and with the consent of the Treasury, indemnify water authorities carrying out fluoridation schemes requested by Health Boards against legal challenge. The indemnity will also cover liabilities incurred by water authorities in connection with the provision of fluoridated water except those attributable to criminal procedures. An Agreement for each scheme will be prepared and processed by the Scottish Office. The terms of the indemnity, which have been agreed with COSLA, are attached at Annex A.

13. Because of the direct statutory link which already exists between the Secretary of State and Health Boards no indemnity is necessary to meet any damages which might be awarded against a Health Board.

Enquiries

14. Any enquiries about the provisions contained in this circular or about the Water (Fluoridation) Act 1985 should be made to Mr L C Cunning, (031 244 2504) at the above address.

Yours faithfully



G A ANDERSON

ANNEX A TO NHS CIRCULAR No 1991(GEN)16

INDEMNITY AGREEMENT

between

THE SECRETARY OF STATE FOR SCOTLAND

and

COUNCIL

1990

Fluoridation of Water Supplies by
Council

Solicitor
to
the Secretary of State for Scotland

INDEMNITY AGREEMENT

between

THE SECRETARY OF STATE FOR SCOTLAND
(hereinafter referred to as "the
Secretary of State")

and

[] COUNCIL as water
authority (which Council and its
successors are hereinafter referred to
as "the Council")

WHEREAS following an application by the [] Health Board to the Council
in accordance with the Water (Fluoridation) Act 1985 the Board and the Council
have entered into an Agreement dated [] whereby the Council will,
subject to certain terms and conditions, increase the fluoride content of the
water supplied by the Council within the area specified in Schedule [] to
that Agreement (which Agreement is hereinafter referred to as "the Fluoridation
Agreement" and a copy of which is annexed hereto);

AND WHEREAS, in terms of section 172 of the Water Act 1989, the Secretary of
State with the consent of the Treasury has agreed, subject to the terms and
conditions set out below, to indemnify the Council in the event of certain
claims being made or proceedings being taken against the Council in connection
with anything done or proposed to be done for the purpose of increasing the
fluoride content of any water supplied by the Council;

NOW THEREFORE the parties do hereby agree as follows:-

(FIRST) The Secretary of State shall indemnify and keep indemnified the
Council, acting or proposing to act or having acted in
performance or purported performance of its obligations under the
Fluoridation Agreement against the following:-

(a) liabilities incurred by the Council in connection with
any such actions or proposed actions, where such liabilities
are incurred by the Council in connection with anything done

for the purpose of increasing the fluoride content of any water supplied by the Council;

(b) costs or expenses which are incurred by the Council, or for which the Council is liable, in connection with any proceedings which have been or may be brought by any person in respect of any such actions or proposed actions, where such proceedings are with respect to things done or proposed to be done for the purpose of increasing the fluoride content of any water; and

(c) expenditure incurred by the Council in complying with an order made in any such proceedings.

(SECOND) The indemnity contained in Clause (FIRST) shall not extend to any liabilities, costs, expenses or expenditure incurred in respect of any criminal proceedings.

(THIRD) No claim may be made by the Council under this indemnity unless the following conditions have been satisfied:-

(a) the liabilities which would otherwise give rise to such claim have not been separately met by the Secretary of State or the other party to the Fluoridation Agreement;

(b) where the Council is entitled to recover an indemnity or contribution from some other person, the Council has taken reasonable steps to recover such indemnity or contribution before making such claim;

(c) the Council shall have notified the Secretary of State as soon as reasonably practicable after becoming aware of any proceedings or action or threat of proceedings or action taken or made against it in any matter which gives rise or is likely to give rise to a claim under this indemnity and the Council shall not have made any admission of liability or settlement of those proceedings or action without the

approval of the Secretary of State having first been obtained; and

(d) the Council shall take such action as the Secretary of State shall reasonably request with regard to the conduct of such proceedings or action or threat thereof.

(FOURTH) Any request, approval or notification under Clause (THIRD) shall be in writing and sent by pre-paid first class recorded delivery post addressed to the intended recipient at the following address as appropriate (or such other address as may have been notified for the purpose):-

(a) in the case of the Secretary of State at:

St Andrew's House
Edinburgh
EH1 3DE

(b) in the case of the Council at

[]

(FIFTH) The Council shall, if the Secretary of State so requires, assign to him all right, title and interest to recover such indemnity or contribution as is referred to in Clause (THIRD)(b) above which the Council may have.

(SIXTH) The parties consent to registration hereof for preservation and execution: IN WITNESS WHEREOF

MODEL AGREEMENT

WATER (FLUORIDATION) ACT 1985

Health Board

and

Council

To raise the fluoride content of
water treated for public supply

AGREEMENT

between

HEALTH BOARD [design]
(hereinafter referred to as "the Board")

and

COUNCIL as water authority
[design] (hereinafter referred to as
"the Council")

WHEREAS the Board has in accordance with the Water (Fluoridation) Act 1985 (hereinafter referred to as "the Act") applied to the Council to increase the fluoride content of the water supplied by the Council within the area specified in Schedule [] annexed hereto;

AND WHEREAS the Council has agreed to the said application subject to the conditions herein specified;

NOW THEREFORE it is hereby Agreed as follows:-

Raising the fluoride content of water

(FIRST) The Council in accordance with the provisions of the Act and of this Agreement will as from the [] day of [] Nineteen hundred and [] hereinafter called "the commencement date" (unless prevented by accident, mechanical breakdown, the execution of works or other sufficient cause) fluoridate water treated by the Council at the waterworks specified in Schedule [] annexed hereto.

(SECOND) The fluoride content of the water supplied by the Council within the area specified in the said Schedule [] so far as reasonably practicable, will be maintained at one milligram per

litre. In the event of any sufficient cause as aforesaid preventing or affecting fluoridation, the Council will as soon as practicable restore the fluoride content to that provided for by this Clause. The fluoride content of such water shall never exceed 1.5 milligrams per litre of water. The mean fluoride content in any calendar month measured in accordance with Clause (THIRD) shall be not less than 0.9 and not greater than 1.1 milligrams per litre of water. For at least ninety per cent of the time during which this Agreement is in operation, the mean fluoride content measured as aforesaid shall be not less than 0.8 and not greater than 1.2 milligrams per litre of water.

(THIRD) The Code of Practice on Technical Aspects of Fluoridation of Water Supplies issued by the Department of the Environment and published in 1987 by Her Majesty's Stationery Office and any amendment or replacement of the same shall apply in relation to the fluoridation of water hereunder and the construction and operation of any fluoridation plant installed and operated by the Council in connection therewith. Without prejudice to the generality of Clauses (FIRST) and (SECOND) the mean fluoride content of water supplied by the Council within the area specified in Clause (FIRST) shall be measured at least once in every period of seven consecutive days at [location of sampling point] while fluoridation plant at [location] by means of which fluoride is added to such water is in operation.

Payment of the Council's costs

(FOURTH) (One) The Board shall, upon demand made from time to time, pay to the Council all outlays and expenses reasonably incurred by the Council in the proper or properly attempted performance of this Agreement. Without prejudice to the foregoing generality, the said outlays and expenses shall include those incurred in respect of -

(1) acquisition of land, the provision, renewal or replacement of buildings, accommodation, works, plant, apparatus, equipment (including safety equipment) or vehicles necessary for the performance of the Council's obligations under this Agreement;

(2) repairing, monitoring, maintaining and operating the said buildings, accommodation, works, plant, apparatus, equipment or vehicles;

(3) purchase of all chemicals required for fluoridation of water in accordance with this Agreement;

(4) sampling and analysis of the water to establish its fluoride content;

(5) insurance effected by the Council against all claims or proceedings arising from the performance or properly attempted performance of the Council's obligations under this Agreement;

(6) any removal or relinquishment of the said buildings, accommodation, works, apparatus, vehicles or equipment which is expedient following determination or due withdrawal of the application in pursuance of which this Agreement is made in terms of Clause (EIGHTH) hereof, provided that the Board shall be paid by the Council the realisable value thereof and of any land acquired for or in connection therewith or, where a relevant apportionment of costs has been made under Sub-Clause (Two) of this Clause, such proportion of that value as accords therewith.

(Two) Insofar as any such expenses and outlays as aforesaid are not wholly attributable to the necessary performance by the

Council of its obligations under this Agreement, the Board shall be liable only for a proper proportion of such expenses and outlays which is necessarily attributable to the Council's performance of the said obligations.

(Three) The Board shall pay the proportion of the overhead and administrative costs of the Council attributable to the necessary performance of the said obligations including without prejudice to the generality thereof -

(1) salaries, wages and superannuation of employees of the Council so far as the same are not otherwise included;

(2) accounting services and audit;

(3) accommodation, printing, stationery, telephone, postages and general office expenses; and

(4) electricity and other fuel.

Records and accounts

(FIFTH) The Council shall keep records of the fluoride levels of water supplied from its water treatment works and shall each calendar month, or more frequently as agreed, provide the Board with copies thereof. The Council shall also keep all records and accounts requisite to vouch expenditure for which the Board is liable under this Agreement, which records and accounts shall be available for inspection by authorised officers of the board at all reasonable times.

Inspection and sampling

(SIXTH)

The Council shall, on reasonable notice, allow the Health Board's Chief Administrative Medical Officer and, in addition or alternatively, any duly authorised officer or agent of the Board access to its water treatment works for the purpose of inspecting fluoridation plant in the said works and taking samples of fluoridated water therefrom: provided that all of those permitted such access shall be accompanied at all times within the same works by at least one officer of the Council.

Warranty

(SEVENTH)

By the execution of these presents the Board confirms that the Board is entitled to make the application to which this Agreement relates and that all requirements imposed by section 4 of the Act on the Board have been duly implemented.

Term of the Agreement

(EIGHTH)

(One) Subject to sub-clause (Two), this Agreement shall remain in force for fifteen years from the commencement date or such longer period as the parties may agree in writing and it shall thereupon determine save in relation to -

(1) the obligation in Clause (FOURTH) hereof concerning the payment of costs actually incurred at the date of determination of this Agreement;

(2) the obligations in Clause (FOURTH) (One) (5) hereof regarding the cost of maintaining, until the end of any relevant limitation or prescription period, the insurance referred to in that sub-clause;

(3) the obligations contained in Clause (FOURTH) (One) (6) hereof; and

(4) the provisions of Clause (NINTH) hereof.

(Two) The Board may give not less than three months' written notice to the Council of their intention to terminate this Agreement on a date prior to the due date of determination referred to in sub-clause (One). Such termination shall be construed as withdrawal of the application for the purposes of section 1(2) of the Act. On the date of termination referred to in the notice given for the purposes of this sub-clause, this Agreement shall determine -

(a) save in relation to the matter specified in sub-clause (One); and

(b) subject to payment by the Board of any costs in addition to those which might be payable in terms of the obligation referred to in paragraph (1) of sub-clause (One) above where those additional costs are incurred by the Council as a necessary consequence of the early termination.

Arbitration

(NINTH) Any dispute between the parties arising out of this Agreement shall be referred to a single arbiter to be appointed, failing agreement between the parties, by the Secretary of State.

Communications

(TENTH) All communications made in pursuance of this Agreement shall be in writing and sent -

(1) in the case of the Board, to its General Manager at [insert address]; and

(2) in the case of the Council, to its Chief Executive at
[insert address],

or to such other person at such other address as either party may
for the purpose of this Agreement from time to time intimate to
the other.

Applicable Law

(ELEVENTH) This Agreement shall be governed by and construed according to
the law of Scotland.

Consent to registration

(TWELFTH) The parties consent to registration hereof for preservation and
execution: IN WITNESS WHEREOF

