
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 170

The Bathing Waters (Scotland) Regulations 2008

PART 6

MANAGEMENT OF BATHING WATERS

Management measures for “poor” bathing waters

11.—(1) This regulation applies where SEPA classifies a bathing water as “poor” under regulation 10.

(2) SEPA must—

- (a) advise the Scottish Ministers, the relevant local authority and the relevant owner of the classification; and
- (b) issue advice against bathing for that bathing water.

(3) Where a SEPA controlled sign is situated at the bathing water, SEPA must update that sign so that it displays that the bathing water has been classified as “poor”.

(4) Subject to paragraph (5) SEPA must take such action as it considers necessary, whether in relation to the regulation of any controlled activity or under any other functions to ensure that the bathing water can be classified as “sufficient”, “good” or “excellent”.

(5) SEPA will not be bound under paragraph (4) to achieve sufficient, good, or excellent classification for a bathing water if permanent advice against bathing has been issued under regulation 10(2) with regard to that bathing water.

Management measures at bathing waters subject to short-term pollution

12. Where short-term pollution is predicted or present at a bathing water, SEPA must take such action as it considers necessary, whether under regulations relating to any controlled activity or under any other functions, to ensure that the short-term pollution is prevented, reduced or eliminated.

Management measures at bathing waters in abnormal situations and exceptional circumstances

13.—(1) Where an interested party is of the opinion that an abnormal situation or an exceptional circumstance has occurred in relation to a bathing water, that party must notify the other interested parties and the relevant health board.

(2) Upon notification being given under paragraph (1), SEPA is to advise the following of the notification—

- (a) the Scottish Ministers and the person with proprietorial interest in the bathing water;
- (b) where the abnormal situation or exceptional circumstance is (in the opinion of SEPA) due to, or made worse by, discharge from the public sewerage system, Scottish Water, and
- (c) where the abnormal situation or exceptional circumstance is likely to affect a bathing water situated in another local authority area, the local authority responsible for that area.

(3) SEPA and the relevant local authority must endeavour to determine jointly whether an abnormal situation or an exceptional circumstance has occurred and in doing so must consult with the relevant health board.

(4) Where SEPA and the local authority cannot agree for the purposes of paragraph (3) the determination of SEPA is final.

(5) Upon a determination that an abnormal situation or an exceptional circumstance has occurred, the relevant local authority—

- (a) must promptly update any sign erected by it under regulation 8 and erect further signs (and thereafter maintain them) for the duration of the incident in such areas of the bathing water as are necessary to advise bathers of the incident and against bathing;
- (b) must immediately consult with the other interested parties, the Scottish Ministers, the person with proprietorial interest in the bathing water and such other persons as it thinks fit as to whether to take action, and what action to take, to remove or reduce the risk to bathers' health, having regard to—
 - (i) the likely duration of the event or incident; and
 - (ii) the present and continuing efficacy of the signs erected under sub-paragraph (a) in deterring bathing; and
- (c) may, after consultation under sub-paragraph (b), take such action as is reasonably necessary to reduce the risk to bathers' health, including entering onto land and removing materials as it thinks fit.

Management measures at bathing waters affected by cyanobacterial proliferation

14.—(1) Where an interested party is aware of a cyanobacterial proliferation in relation to a bathing water which would reasonably be considered to pose a risk to bathers' health, that party must notify the other interested parties and the relevant health board.

(2) Upon becoming aware of a cyanobacterial proliferation which would reasonably be considered to pose a risk to bathers' health, the relevant local authority must—

- (a) promptly update any sign erected by it under regulation 8 and erect further signs (and thereafter maintain them) for the duration of the cyanobacterial proliferation in such areas of the bathing water as are necessary to advise bathers of the presence of the proliferation and against bathing; and
- (b) thereafter consult with the other interested parties, the relevant health board and the person with proprietorial interest in the bathing water as to whether to take action and what action to take, to remove or reduce the cyanobacterial proliferation having regard to—
 - (i) the likely duration of the cyanobacterial proliferation;
 - (ii) the extent of the cyanobacterial proliferation and the likelihood of it increasing; and
 - (iii) the present and continuing efficacy of the signs erected under sub-paragraph (a) in deterring bathing.

(3) The relevant local authority may—

- (a) after consulting under paragraph (2)(b) and having regard to the views expressed, take such action (including the removal of materials) to remove or reduce such cyanobacterial proliferation as is reasonably necessary to remedy or mitigate the risk to bathers' health;
- (b) enter onto land as necessary in the discharge of its duties under paragraph (2)(a);
- (c) enter onto land (upon the provision of 7 days' notice in writing to the landowner) as necessary in the exercise of its functions under sub-paragraph (a).

(4) In addition to any action taken by the local authority under paragraph (3) SEPA must take such action as it considers necessary, whether under regulations relating to any controlled activity or under any other functions, to ensure that the cyanobacterial proliferation is prevented, reduced or eliminated.

Management measures at bathing waters affected by macro-algae and marine phytoplankton proliferation

15.—(1) Where an interested party is of the opinion that a proliferation of macro-algae or marine phytoplankton has occurred in relation to a bathing water which poses a health risk to bathers or is unacceptable, that party must notify the other interested parties and, in the case of a health risk, the relevant health board.

(2) The interested parties must endeavour to determine jointly whether the proliferation of macro-algae or marine phytoplankton is a health risk or is unacceptable and, in the case of possible health risk, must do this under reference to the views of the relevant health board.

(3) Where the interested parties cannot agree for the purposes of paragraph (2), the determination of the relevant local authority is final.

(4) In determining whether the proliferation poses a health risk, the interested parties must have regard mainly to the risk to bathers' health due to the threat of disease but may, where they perceive it to be significant, have regard to the risk of direct physical injury to bathers.

(5) In determining whether the proliferation is unacceptable, the interested parties must have regard to—

- (a) whether the extent or volume of the proliferation is unusual;
- (b) whether the proliferation is unsightly;
- (c) any effluence or effluvia arising from the proliferation;
- (d) the impact upon the ecosystem of that bathing water which would result from the removal of the proliferation;
- (e) the amount of waste or litter which is contained in the proliferation; and
- (f) where the bathing water or any part of it forms part of a European site or of land which is a SSSI, the views of SNH upon the criteria set out in sub-paragraphs (a) to (e).

(6) Upon a determination under paragraph (2) that a proliferation is a health risk or unacceptable, the relevant local authority must—

- (a) promptly update any sign erected by it under regulation 8 and erect further signs (and thereafter maintain them) for the duration of the proliferation in such areas of the bathing water as are necessary to advise bathers of the presence of the proliferation, and in the case of a health risk, against bathing; and
- (b) thereafter consult with the other interested parties, the person with proprietorial interest in the bathing water and where appropriate SNH, as to whether to take action and what action to take to remove or reduce such a proliferation, having regard to:—
 - (i) the likely duration of the proliferation;
 - (ii) the extent of the proliferation and the likelihood of it increasing; and
 - (iii) in the case of a health risk, the present and continuing efficacy of the signs erected under sub-paragraph (a) in deterring bathing.

(7) The relevant local authority may—

- (a) enter onto land as necessary in the discharge of its duties under paragraph (6)(a);

- (b) after consulting under paragraph (6)(b) and having regard to the views expressed, take such action (including the removal of materials) to remove or reduce the proliferation as is reasonably necessary to remedy or mitigate the risk to bathers' health;
- (c) enter onto land (upon the provision of 7 days notice in writing to the landowner) as necessary in the exercise of its functions under sub-paragraph (b).

(8) Where a determination under paragraph (2) or (3) is to the effect that a proliferation is a health risk, there is no need for it to be determined whether the proliferation is also unacceptable.

Management measures at bathing waters affected by other pollution

16.—(1) This regulation applies where an interested party is aware of pollution which—

- (a) takes the form of tarry residues, glass, plastic, rubber or any waste; and
- (b) is of such an amount as to require remedial and restorative measures to be undertaken to a bathing water.

(2) In determining the amount of pollution that requires remedial or restorative measures under paragraph (1) the interested parties must take into account whether it presents a risk to bathers' health.

(3) The interested party must notify the existence of the pollution to—

- (a) the other interested parties;
- (b) the person with proprietorial interest in the bathing water; and
- (c) where the bathing water or any part of it forms part of a European site or of land which is a SSSI, SNH.

(4) Subject to the provisions of any enactment relative to the protection of European sites or land which is a SSSI, the relevant local authority must take such action as is necessary in order to remedy or mitigate the effect of the pollution within 7 days of becoming aware of it.

(5) When complying with its obligations under paragraph (4), a local authority must give reasonable notice to the owner of the land—

- (a) upon which it requires to carry out remedial or restorative measures; or
- (b) that it requires to cross in order to carry out such works.