

2008 No. 170

ENVIRONMENTAL PROTECTION

WATER

The Bathing Waters (Scotland) Regulations 2008

Made - - - - *30th April 2008*

Laid before the Scottish Parliament *1st May 2008*

Coming into force in accordance with Regulation 1

The Scottish Ministers make the following regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and all other powers enabling them to do so.

PART 1

GENERAL PROVISIONS

Citation, commencement and extent

- 1.—(1) These Regulations may be cited as the Bathing Waters (Scotland) Regulations 2008.
- (2) Subject to paragraphs (3) to (5), these Regulations come into force on 23rd May 2008.
- (3) Regulations 12 to 16 come into force on 24th March 2011.
- (4) Regulations 8 and 21(1)(c) and (d) and (2)(b) come into force on 24th March 2012.
- (5) Regulations 20(b) and 22 come into force on 1st January 2015.
- (6) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations—

“abnormal situation” means an event or combination of events impacting upon bathing water quality which SEPA would not expect to occur, on average, more than once every 4 years;

“bathing season” means the period determined by the Scottish Ministers under regulation 3 relative to each bathing water;

“bathing water” means any surface water designated by the Scottish Ministers under regulation 3;

(a) 1972 c.68. Section 2(2) was amended by Schedule 8, paragraph 15(3) of the Scotland Act 1998 (c.46) and the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”), section 27(1). The functions conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998. Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act.

“bathing water directive” means Directive 2006/7/EC(a) of the European Parliament and of the Council concerning the management of bathing water quality and repealing Directive 76/160/EEC(b);

“bathing water profile” means a profile established under regulation 6;

“bathing water quality assessment” means an assessment under regulation 9 in compliance with the provisions of Schedule 3, with the aim of classification;

“coastal water” has the same meaning as it has in section 3(8) of the Water Environment and Water Services (Scotland) Act 2003(c);

“controlled activity” has the same meaning as it has in section 20 of the Water Environment and Water Services (Scotland) Act 2003(d);

“cyanobacterial proliferation” means an accumulation of cyanobacteria such as a bloom, mat or scum;

“European site” has the same meaning as it has in regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994(e);

“exceptional circumstance” means circumstances at a bathing water that are unexpected, and which have had or could reasonably be expected to have, an adverse effect on bathing water quality and on bathers’ health;

“inland water” has the same meaning as it has in section 3(6) of the Water Environment and Water Services (Scotland) Act 2003;

“interested party”, in relation to a bathing water, means SEPA, the relevant local authority or the relevant owner;

“management measures” means such remedial and restorative measures as are required of a person under regulations 11 to 16;

“permanent advice against bathing” means advice against bathing lasting for at least one bathing season;

“pollution” means the presence of any organisms or waste as described in regulation 14 to 16 or intestinal enterococci and Escherichia coli;

“public body” means any body that is also a ‘contracting authority’ in terms of the Public Contracts (Scotland) Regulations 2006(f);

“public sewerage system” has the same meaning as it has in Part 2 of the Water Services etc. (Scotland) Act 2005(g);

“relevant health board”, in relation to a bathing water, means the health board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978(h) with responsibility for the area where the water is situated;

“relevant local authority”, in relation to a bathing water, means the council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(i) with responsibility for the area where the water is situated;

(a) O.J. No. L 64, 4.3.2006, p.37.

(b) O.J. No. L 31, 5.2.1976, p.1; amended by Council Directive 91/692/EEC of 23 December 1991 (O.J. No. L 377, 31.12.1991, p.48) and by Council Regulation (EC) No. 807/2003 (O.J. No. L 22, 16.05.2003, p.36).

(c) 2003 asp 3.

(d) section 20 was amended by S.S.I. 2005/348.

(e) S.I. 1994/2716; relevant amending instruments are S.S.I. 2004/475 and 2007/80.

(f) S.S.I. 2006/1.

(g) 2005 asp 3.

(h) 1978 c.29; section 2 was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c.41) Schedule 7, paragraph 1, the National Health Service and Community Care Act 1990 (c.19), section 28, and Schedule 9, paragraph 19, the National Health Service Reform (Scotland) Act 2004 (asp 7), schedule 1, paragraph 1(2) and the Smoking Health and Community Care (Scotland) Act 2005 (asp 13), schedule 2, paragraph 2(2).

(i) 1994 c.39.

“relevant owner”, in relation to a bathing water, means–

- (a) in the case of a non-tidal bathing water: the owner of the land which is connected to the bed of the bathing water and through which (in the opinion of the relevant local authority) the majority of bathers ordinarily access the bathing water; and
- (b) in the case of a tidal bathing water: the owner of the land immediately adjacent to the bathing water above the mean high water spring tide mark through which (in the opinion of the relevant local authority) the majority of bathers ordinarily access the bathing water;

“Scottish Water” means the body corporate established under section 20 of the Water Industry (Scotland) Act 2002(a);

“SEPA” means the Scottish Environment Protection Agency;

“SEPA controlled sign” means signage at a bathing water installed, updated and maintained by SEPA;

“set of bathing water quality data” means data obtained from results from samples taken under Part 1 of Schedule 2;

“short-term pollution” means (notwithstanding the definition of “pollution”) contamination by intestinal enterococci or *Escherichia coli* where SEPA does not normally expect the contamination to affect bathing water quality for more than 72 hours from when the bathing water is first affected;

“SNH” means Scottish Natural Heritage;

“SSSI” means a site of special scientific interest as defined in section 3(6) of the Nature Conservation (Scotland) Act 2004(b);

“surface water” has the same meaning as it has in section 3(3) of the Water Environment and Water Services (Scotland) Act 2003; and

“transitional water” has the same meaning as it has in section 3(7) of the Water Environment and Water Services (Scotland) Act 2003.

Designation of bathing waters and determination of bathing season

3.—(1) Subject to paragraph (3) the Scottish Ministers must establish and keep under annual review–

- (a) a list of the bathing waters designated under this regulation; and
- (b) the bathing season which relates to each bathing water.

(2) The Scottish Ministers must advise SEPA of the bathing waters that they have designated and the bathing season pertaining to each.

(3) The Scottish Ministers must–

- (a) designate an area of surface water as a bathing water if–
 - (i) they expect a large number of people to bathe there, having regard to past trends and infrastructure or facilities provided, or other measures taken, to promote bathing; and
 - (ii) permanent advice against bathing there has not been introduced; and
- (b) determine for each bathing water the period during which large number of bathers are expected there as the bathing season.

(4) Paragraph (3)(a) does not apply to any waters which are–

- (a) swimming pools;
- (b) spa pools; or
- (c) enclosed waters–
 - (i) subject to treatment such as disinfection;
 - (ii) used for therapeutic purposes; or

(a) 2002 asp 3.

(b) 2004 asp 6.

(iii) which are artificially created and are separated from surface water and groundwater.

(5) Before the start of the first bathing season in each calendar year, SEPA and the Scottish Ministers must publish on their websites, and in any other manner that they consider appropriate for the purpose of bringing them to the attention of persons likely to be affected—

- (a) the full list of bathing waters; and
- (b) a list of all the former bathing waters (as defined in regulation 8(9)),

and the Scottish Ministers must make notification of such publication in the Edinburgh Gazette.

(6) Where any of the circumstances referred to in paragraph (7) occur the Scottish Ministers must, in accordance with paragraphs (8) and (9), give notice of the extent of designation of the bathing water and the bathing season to—

- (a) the relevant local authority;
- (b) the relevant health board;
- (c) Scottish Water; and
- (d) SNH.

(7) The circumstances referred to in paragraph (6) are where:—

- (a) an area of surface water is designated as a bathing water for the first time under these Regulations;
- (b) a former bathing water, which ceased to be designated through its failure to meet the criteria set out in paragraph (3)(a)(i), is designated as a bathing water for the first time after it last ceased to be designated;
- (c) permanent advice against bathing has been withdrawn by SEPA in terms of regulation 10(3) and the former bathing water is to be designated as a bathing water for the first time after that advice has been withdrawn; or
- (d) an alteration is made to the duration of the bathing season at a designated bathing water.

(8) Notice required by paragraph (6) must be given before the appropriate date in any calendar year in respect of any circumstances which have occurred before that date and have not previously been notified.

(9) In paragraph (8), “the appropriate date” is the date in each calendar year from 2009 onwards which falls 32 days prior to the date on which SEPA or the Scottish Ministers first make publication on a website under paragraph (5) for that year.

General duties

4.—(1) SEPA and any local authority must promptly provide—

- (a) such information to the Scottish Ministers about the quality of bathing waters as the Scottish Ministers may by written notice reasonably require; and
- (b) such information to a local authority about the quality of the bathing waters in its area as the local authority may by written notice reasonably require.

(2) The Scottish Ministers and SEPA must exercise their relevant functions—

- (a) so as to ensure that, by the end of the bathing season in 2015, all bathing waters are classified under regulation 10 as “sufficient”, “good” or “excellent”;
- (b) so as to take such realistic and proportionate measures as they consider appropriate with a view to increasing the number of bathing waters classified under regulation 10 as “good” or “excellent”; and
- (c) in all other respects, so as to secure compliance with the requirements of the bathing water directive.

(3) Notwithstanding–

- (a) paragraph (2)(a) a bathing water may be classified as “poor”, provided the provisions of these Regulations relating to waters so classified are complied with;
- (b) paragraph (2)(b) there shall be no obligation to take measures which would result in disproportionate expense or where any change in classification is infeasible.

(4) In this regulation, “relevant functions” means functions under the relevant enactments as defined in section 2 of the Water Environment and Water Services (Scotland) Act 2003.

Consultation

5.—(1) The Scottish Ministers must ensure that the public, the appropriate local authorities, the relevant health board, SEPA, and any other public body that they think may have an interest in any proposed bathing water (hereinafter referred to as the “consultees”) are given early and effective opportunities to participate in the establishment, review or revision of the list of bathing waters and the length of the bathing season relative to a designated bathing water, in accordance with paragraphs (2) to (4).

(2) The Scottish Ministers must–

- (a) ensure that the consultees are informed about any proposals for the establishment, review or revision of the list of bathing waters or length of season;
- (b) ensure that information about the proposals referred to in sub-paragraph (a) is made available to the consultees, including information about the right to participate in decision making in relation to those proposals;
- (c) ensure that the consultees are entitled to make comments before any decision is made on the establishment, review or revision of the list of bathing waters or length of season;
- (d) in making any such decision, take due account of the results of the consultation; and
- (e) having examined the comments made and opinions expressed by the consultees, make reasonable efforts to inform them about–
 - (i) the decisions taken and the reasons and considerations on which those decisions are based; and
 - (ii) the consultation process.

(3) The Scottish Ministers must publish any information required to carry out their functions under paragraphs (1) and (2) in such manner as they consider appropriate for the purpose of bringing it to the attention of the consultees and without prejudice to the foregoing must–

- (a) publish such information on their website; and
- (b) specify in a notice on the website the detailed arrangements made to enable participation by the consultees in the establishment, review or revision of a bathing water or season including–
 - (i) the address to which comments may be submitted; and
 - (ii) the period within which comments may be submitted.

(4) The Scottish Ministers must ensure that sufficient time is allowed for each of the different stages of consultation required by paragraph (2).

(5) SEPA, any local authority and the Scottish Ministers must–

- (a) encourage public participation in the exercise of their respective functions under these Regulations;
- (b) ensure that the public has an opportunity–
 - (i) to find out how to participate; and
 - (ii) to submit comments or complaints; and
- (c) take due account of any information they have obtained from the public when exercising their respective functions under these Regulations.

PART 2

BATHING WATER PROFILES

Bathing water profiles

6.—(1) SEPA must by 24th March 2011 establish, and thereafter keep under review, a bathing water profile for every bathing water in accordance with Schedule 1.

(2) Before establishing each bathing water profile and prior to any review of a profile, SEPA must consult—

- (a) the relevant local authority;
- (b) the relevant health board;
- (c) Scottish Water;
- (d) where the bathing water or any part of the bathing water forms part of a European site or of land which is a SSSI, SNH; and
- (e) where agricultural activities cause pollution that might affect bathing water quality and pose a risk to bathers' health, such persons or bodies appearing to it to be representative of local agricultural interests.

(3) SEPA may combine the bathing water profiles of contiguous bathing waters.

(4) When complying with paragraph (1), SEPA must (where appropriate) take into account the data which it has obtained or analysed under—

- (a) these Regulations;
- (b) the Bathing Waters (Classification) (Scotland) Regulations 1991**(a)**;
- (c) the Water Environment and Water Services (Scotland) Act 2003**(b)**;
- (d) the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003**(c)**; and
- (e) the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004**(d)**.

PART 3

MONITORING OF BATHING WATERS

Monitoring

7.—(1) SEPA and local authorities must monitor and carry out investigations at bathing waters in accordance with this regulation.

(2) Monitoring for—

- (a) intestinal enterococci and Escherichia coli must be carried out in accordance with Part 1 of Schedule 2;
- (b) cyanobacteria must be carried out in accordance with Part 2 of Schedule 2; and
- (c) other pollution which takes the form of tarry residues, glass, plastic, rubber or other such waste must be carried out in accordance with Part 3 of Schedule 2.

(3) Investigation of macro-algae and marine phytoplankton proliferation must be carried out in accordance with Part 4 of Schedule 2.

(a) S.I. 1991/1609.
(b) 2003 asp 3; as amended by S.S.I. 2005/348.
(c) S.I. 2003/3245.
(d) S.I. 2004/99; as amended by S.I. 2005/2035.

(4) Any monitoring programme carried out by SEPA in accordance with Part 3 of Schedule 2 is not to coincide with a monitoring programme carried out by a local authority under that Part.

(5) The monitoring and investigation required by paragraphs (2)(b) and (c) and (3) must take place from 24th March 2011 onwards.

(6) The monitoring required by paragraph (2)(a) must take place from 24th March 2012 onwards.

PART 4

PUBLIC INFORMATION

Public information

8.—(1) The relevant local authority must ensure that the following information about a bathing water is available during the bathing season on a publicly accessible sign (or signs if necessary) erected on land where such sign or signs are likely to be noticed by the public as they access the bathing water:—

- (a) the bathing water's current classification pursuant to regulation 10;
- (b) whether a bathing prohibition has been imposed there, and if so, why;
- (c) a general description of the bathing water in non-technical language, based on its bathing water profile;
- (d) where its bathing water profile indicates that the bathing water is likely to be affected by incidents of short-term pollution—
 - (i) an indication of such; and
 - (ii) an indication of the number of days for which advice against bathing was introduced or a prohibition on bathing was imposed during the immediately preceding bathing season because of short-term pollution;
- (e) where a bathing prohibition has been introduced for whatever reason (and SEPA has advised the relevant local authority of this) the management measures being undertaken to prevent, reduce, or eliminate the causes of pollution that have led to the prohibition; and
- (f) an indication of the sources of more complete information published in accordance with paragraph (8).

(2) In deciding the location of any sign or signs in compliance with paragraph (1), a local authority must consult with SEPA.

(3) The sign referred to in paragraph (1) must be designed in such a way as to allow the additional SEPA information referred to in paragraph (5) to be affixed to it.

(4) SEPA must ensure that the additional SEPA information is notified to the relevant local authority as soon as possible upon SEPA becoming aware of it.

(5) The additional SEPA information is—

- (a) whether any advice against bathing there has been introduced, and if so, why;
- (b) a warning whenever short-term pollution is predicted or is occurring (unless such notification is already made available through a SEPA controlled sign at the bathing water) and the cause of the predicted or actual pollution;
- (c) that an abnormal situation has occurred together with information as to its nature and expected duration; and
- (d) where advice regarding short-term pollution has been issued, or advice against bathing has been introduced for whatever reason, the management measures being undertaken to prevent, reduce, or eliminate the cause of the pollution or to lead to the withdrawal of the advice.

(6) A local authority must ensure that the additional SEPA information is displayed at the sign referred to in (1) as soon as possible upon becoming aware of that information.

(7) The obligations in paragraph (6) do not apply in so far as the additional SEPA information is already displayed on a SEPA controlled sign at the bathing water.

(8) SEPA must, in relation to each bathing water, publish the following information on its website–

- (a) the information referred to in paragraph (1);
- (b) the information referred to in paragraph (5);
- (c) the information referred to in paragraph (9);
- (d) before the start of every bathing season, the bathing water’s classification in accordance with regulation 10 over the last 3 years;
- (e) the current bathing water profile;
- (f) as soon as possible after the completion of the analysis under Schedule 2, the results of the monitoring carried out in accordance with regulation 7 since the beginning of the current bathing season;
- (g) where its bathing water profile indicates that the bathing water is likely to be affected by incidents of short-term pollution, general information on–
 - (i) the conditions likely to cause short-term pollution;
 - (ii) the likelihood of short-term pollution and its possible duration; and
 - (iii) the causes of short-term pollution and management measures taken with respect to it; and
- (h) where the bathing water is classified as “poor” under regulation 10, information as to–
 - (i) the causes of pollution there; and
 - (ii) the management measures being taken there under regulation 11.

(9) Where permanent advice against bathing has been issued in relation to a bathing water (and has not been withdrawn), that water is a former bathing water and the relevant local authority must ensure that the following information is available on a sign (or signs if necessary) in an easily accessible place in what was the vicinity of the bathing water, during those parts of the year which formerly constituted the bathing season–

- (a) the former bathing water is no longer a bathing water;
- (b) an indication that permanent advice against bathing has been issued; and
- (c) the reasons for this.

(10) In addition to its obligations under regulations 11 to 16, SEPA must ensure that it provides all information referred to in paragraphs (1), (5) and (9) to the relevant local authority as soon as it becomes aware of it.

(11) SEPA may make use of such additional media as appropriate to publicise all or part of the information referred to in paragraph (5).

(12) Public information under these Regulations must–

- (a) wherever possible, be provided using maps;
- (b) be presented in a clear and coherent manner; and
- (c) where it is information required by paragraph (8)(d) to (h), be in such languages in addition to English as are appropriate, having regard to the location of the bathing water and ease of public understanding.

(13) When complying with its obligations under paragraphs (1), (6) and (9) a local authority must–

- (a) notify the owner of the land upon which it intends to erect a sign; or
- (b) where a sign is already situated on land, notify the owner of the land that it intends to carry out planned maintenance of that sign (where maintenance is the repair and upkeep

of the sign to ensure continued availability of the information that must be displayed upon it).

(14) The notification referred to in paragraph (13) must give reasonable notice to the owner of the land and, in the case of a notification under sub-paragraph (a), must identify the general area where the sign is to be located.

(15) Where SEPA erects a SEPA controlled sign in the vicinity of a bathing water, paragraphs (13) and (14) apply to SEPA as they apply to a local authority.

(16) A local authority may enter onto any land for the purpose of exercising its functions under paragraph (1), (6) or (9).

(17) SEPA may enter onto any land for the purpose of erecting a SEPA controlled sign.

(18) Where a public body is a relevant owner in relation to a bathing water, the relevant local authority may enter into an agreement with that body for the body to erect, maintain and update as necessary any sign required by this regulation in relation to that water.

(19) Upon being notified of an agreement under paragraph (18) SEPA must supply information required by this regulation to both parties to the agreement.

PART 5

BATHING WATER ASSESSMENT AND CLASSIFICATION

Assessment

9.—(1) At the end of every bathing season, for every bathing water SEPA must—

- (a) prepare a set of bathing water quality data for that season; and
- (b) carry out a bathing water quality assessment using the set of bathing water quality data compiled in relation to that season and the relevant assessment period.

(2) The obligation in paragraph (1)(a) is to apply for the first time at the end of the 2012 bathing season.

(3) The obligation in paragraph (1)(b) is to apply for the first time from the end of the 2015 bathing season.

(4) In this regulation, “a set of bathing water quality data for that season” comprises of samples collected in compliance with regulation 7(2)(a), which number at least:—

- (a) 3 samples, where:—
 - (i) the bathing season does not exceed 8 weeks, or
 - (ii) the bathing water is situated in a region subject to special geographical constraints;or

- (b) 4 samples, in any other case.

(5) In this regulation, the “relevant assessment period” is—

- (a) the immediately preceding 3 bathing seasons;
- (b) where SEPA so decides in accordance with paragraph (7), the immediately preceding 2 bathing seasons; or
- (c) where SEPA so decides in accordance with paragraph (8), the number of immediately preceding bathing seasons, being less than 3, that SEPA may determine in accordance with paragraph (9) or (10), as the case may be.

(6) In this regulation the “set of bathing water quality data compiled in relation to that season and the relevant assessment period” comprises of at least—

- (a) in a case where the bathing water is situated in a region subject to special geographical constraints, 12 samples, and

- (b) in any other case—
 - (i) 16 samples, where the bathing season is in excess of 8 weeks; or
 - (ii) 8 samples, where the bathing season does not exceed 8 weeks.
- (7) SEPA may make a decision under paragraph (5)(b) where—
 - (a) it has consulted the Scottish Ministers; and
 - (b) it is at least 5 years since the last change in the relevant assessment period.
- (8) SEPA may make a decision under paragraph (5)(c)—
 - (a) where it has consulted the Scottish Ministers; and
 - (b) where—
 - (i) the Scottish Ministers designated the bathing water under regulation 3 less than 4 bathing seasons ago; or,
 - (ii) SEPA considers that changes have occurred that are likely to affect the classification of the bathing water under regulation 10.
- (9) In the case of paragraph (8)(b)(i) the number of immediately preceding seasons is the number of seasons (if any) since the bathing water was designated.
- (10) In the case of paragraph (8)(b)(ii) the number of immediately preceding seasons is limited to that number of seasons (if any) in which the water quality data was all collected after the changes referred to in that provision occurred.
- (11) The Scottish Ministers may, after consulting with SEPA—
 - (a) subdivide existing bathing waters in the light of the bathing water quality assessments carried out under this regulation; or
 - (b) group together existing bathing waters in the light of those assessments where those bathing waters—
 - (i) are contiguous;
 - (ii) have received similar such assessments for the preceding 4 years; and
 - (iii) have bathing water profiles which identify a common pollution risk profile.

Classification

10.—(1) At the end of every bathing season from 2015 onwards, on the basis of the assessment made under regulation 9, SEPA must classify every bathing water as “poor”, “sufficient”, “good” or “excellent” in accordance with Schedule 3.

(2) SEPA must issue permanent advice against bathing at a bathing water (which advice must also be notified to the relevant local authority and the relevant owner) if—

- (a) the bathing water is classified as “poor” for 5 consecutive years; or
- (b) the Scottish Ministers, after consultation with SEPA, the relevant local authority and Scottish Water, consider that the achievement of a “sufficient” quality classification at that bathing water would be infeasible or disproportionately expensive.

(3) SEPA may withdraw permanent advice against bathing at a former bathing water (as defined under regulation 8(9)) if the quality of the water is such that if it were a bathing water, it would be classified as “sufficient”, “good” or “excellent” in accordance with Schedule 3, and in those circumstances SEPA must advise—

- (a) the Scottish Ministers,
- (b) the relevant local authority; and
- (c) the relevant owner,

that it has withdrawn its permanent advice against bathing.

(4) SEPA shall advise the Scottish Ministers of all classifications made, and advice issued or withdrawn, by it under this regulation.

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.

PART 7

GENERAL PROVISIONS

Co-ordination of local authority functions

17. The discharge by a local authority of functions under these Regulations is to be co-ordinated by an officer appointed for that purpose by the authority.

Consultation and notification requirements

18.—(1) Where any provision in regulations 13 to 16 requires SEPA or a local authority to consult with or notify a person before taking action and that body considers it to be necessary for the protection of human health that action be taken without delay, the body may proceed to take the action prior to carrying out the consultation or notification.

(2) Where SEPA or a local authority take action in terms of paragraph (1), that body must carry out the consultation or notification as soon as possible after the action is taken.

Bathing water in 2 local authority areas

19. Where a bathing water is situated in the areas of 2 local authorities—

- (a) each of those authorities is to carry out in its area such functions in relation to that water as are conferred on a local authority by these Regulations; and
- (b) an authority intending to exercise any function under regulations 13 to 16 in relation to that water is, before doing so, to consult with the other authority within the area of which the water is situated.

PART 8

MODIFICATION OF INSTRUMENTS

Amendment of 2005 Regulations

20. In Part 2 of Schedule 4 to the Water Environment (Controlled Activities) (Scotland) Regulations 2005(a)—

- (a) insert “The Bathing Waters (Scotland) Regulations 2008(b)” immediately after the entry relating to the Control of Pollution (Silage Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003(c); and

(a) S.S.I. 2005/348.
(b) S.S.I. 2008/170.
(c) S.S.I. 2003/531.

- (b) omit “The Bathing Waters (Classification) (Scotland) Regulations 1991”.

Transitional provisions

- 21.—**(1) The Bathing Waters (Classification) (Scotland) Regulations 1991^(a) have effect as if—
- (a) the reference in regulation 2(2) to “Article 1.2 of Council Directive 76/160/EEC” were a reference to “Article 1.3 of European Parliament and Council Directive 2006/7/EC”;
 - (b) regulation 3 of those Regulations read—

“Waters subject to classification BW1

3.—(1) The classification BW1 shall be applied to any surface water from time to time designated by the Scottish Ministers as a bathing water under regulation 3 of the Bathing Waters (Scotland) Regulations 2008^(b).

(2) In this regulation “surface water” has the same meaning as it has in section 3 of the Water Environment and Water Services (Scotland) Act 2003^(c).”;

- (c) the only criteria for the classification BW1 in Schedule 1 to those Regulations (criteria for classification BW1) were that at least 95 per cent of samples of waters taken and tested in accordance with these Regulations for *Escherichia coli* meet the parametric value of 2,000 per 100 millilitres; and
- (d) Schedules 2 and 3 to those Regulations were omitted.

(2) Every direction given to SEPA under section 40 of the Environment Act 1995 (ministerial directions to the new agencies)^(d) in relation to the Bathing Waters (Classification) (Scotland) Regulations 1991 has effect—

- (a) subject to the transitional provisions in paragraph (1); and
- (b) as if—
 - (i) the only entries in the Annex to Council Directive 76/160/EEC concerning the quality of bathing water^(e) were intestinal enterococci or *Escherichia coli*; and
 - (ii) conformity with the values which appear in column G of that Annex were met where—
 - (aa) at least 90 per cent of samples of waters taken and tested in accordance with these Regulations for intestinal enterococci meet the parametric value of 100 per 100 millilitres; and
 - (bb) at least 80 per cent of samples of waters taken and tested in accordance with these Regulations for *Escherichia coli* meet the parametric value of 100 per 100 millilitres.

(3) Until it classifies a bathing water under regulation 10, for the purposes of regulation 8 SEPA must, subject to the transitional provisions in this regulation, classify the bathing water by reference to whether it conforms to the values in column I or G of the Annex to Council Directive 76/160/EEC.

(a) S.I. 1991/1609.

(b) S.S.I. 2008/170.

(c) 2003 asp 3.

(d) 1995 (c.25); there have been amendments to section 40 not relevant to these regulations. The functions conferred on the appropriate Minister by section 40 of the Environment Act 1995, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(e) O.J. No. L 31, 5.2.1976, p.1, amended by Council Directive 91/692/EEC of 23 December 1991 (O.J. No. L 377, 31.12.1991, p.48) and by Council Regulation (EC) No. 807/2003 (O.J. No. 122, 16.05.2003, p.36).

Revocation

22. The Bathing Waters (Classification) (Scotland) Regulations 1991 are revoked.

St Andrew's House,
Edinburgh
30th April 2008

MICHAEL RUSSELL
Authorised to sign by the Scottish Ministers

BATHING WATER PROFILES

Contents

1.—(1) Every bathing water profile must—

- (a) contain a description of the physical, geographical and hydrological characteristics of—
 - (i) the bathing water; and
 - (ii) any other surface water in the catchment area of the bathing water where the surface water could be a source of pollution for the bathing water;
- (b) identify and assess the causes of pollution that might affect bathing water quality and pose a risk to bathers' health;
- (c) assess the potential for cyanobacterial proliferation;
- (d) assess the potential for the proliferation of macro-algae or phytoplankton;
- (e) identify the location of the monitoring point;
- (f) contain (if the assessment under head (b) indicates that there is a risk of short-term pollution)—
 - (i) information as to the anticipated nature, frequency and duration of short-term pollution;
 - (ii) details of the expected causes of short-term pollution;
 - (iii) details of the management measures taken and the time schedule for the elimination of the causes;
 - (iv) details of the management measures taken during a short-term pollution incident; and
 - (v) the identity and contact details of any person responsible for taking the management measures during the incident.

(2) The information in sub-paragraph (1)(a) and (b) must be detailed on a map whenever practicable.

Review

2.—(1) Where a bathing water is classified as “poor”, “sufficient” or “good” under regulation 10, SEPA must review the bathing water profile—

- (a) at the following minimum frequency—
 - (i) for a “poor” classification, every 2 years;
 - (ii) for a “sufficient” classification, every 3 years; and
 - (iii) for a “good” classification, every 4 years; and
- (b) taking into account the nature and severity of the pollution which affects the bathing water.

(2) Where there are significant construction works or infrastructure changes in or around a bathing water, SEPA must review the bathing water profile before the start of the next bathing season.

SCHEDULE 2

Regulation 7

MONITORING

PART 1

INTESTINAL ENTEROCOCCI AND ESCHERICHIA COLI

Location of monitoring point

1.—(1) Subject to sub-paragraph (3), where SEPA take samples in compliance with this Part they must do so from the monitoring point situated at each bathing water.

(2) SEPA must—

- (a) locate the monitoring point at every bathing water where most bathers are expected: and,
- (b) where possible, take samples 30 centimetres below the water's surface and in water that is at least one metre deep.

(3) Where for whatever reason the taking of samples from the monitoring point is not possible or would pose a danger to any person, SEPA must take samples from the next best site where it is possible to take samples in accordance with sub-paragraph (2)(b) and it is safe to do so.

Monitoring calendar

2.—(1) SEPA must—

- (a) establish a calendar which specifies dates for sampling for every bathing water before the start of every bathing season ('a monitoring calendar'); and
- (b) take samples at every bathing water no later than 4 days after the date specified in the monitoring calendar.

(2) SEPA may suspend the monitoring calendar for the duration of an abnormal situation.

(3) As soon as possible after the end of an abnormal situation SEPA must—

- (a) take one additional sample in order to verify that the situation has ended;
- (b) take sufficient additional samples to ensure that it has the minimum number required for the bathing water for the bathing season; and
- (c) notify the Scottish Ministers of the suspension and provide them with the reasons for it.

(4) SEPA must not include a sample taken under sub-paragraph (3)(a) in the set of bathing water quality data for a bathing water.

(5) Where an abnormal situation continues beyond the end of a bathing season, SEPA need not take a sample in terms of sub-paragraph (3)(a).

Monitoring

3.—(1) SEPA must—

- (a) take and analyse at least 4 samples from every bathing water for every bathing season except where subparagraph (2) or (3) applies;
- (b) take the first such sample for every bathing season shortly before the start of that season; and
- (c) take samples from every bathing water throughout the bathing season at regular intervals and, except where the bathing water is situated in a region subject to special geographical constraints, such intervals must not exceed one month.

(2) Where the bathing season for a particular bathing water does not exceed 8 weeks, SEPA needs to take and analyse only 3 samples.

(3) Where a bathing water is situated in a region subject to special geographical constraints, SEPA needs to take and analyse only 3 samples.

Short-term pollution

4.—(1) This paragraph applies where the appropriate signage and management measures for short-term pollution are in place in accordance with regulations 8 and 12 and a short-term pollution incident is occurring or is predicted to occur.

(2) SEPA may decide not to include samples taken during a short-term pollution incident in the set of bathing water quality data for a bathing water.

(3) As soon as possible after the end of the short-term pollution incident, SEPA must take one additional sample in order to verify that the incident has ended.

(4) SEPA must not include the sample taken under sub-paragraph (3) in the set of bathing water quality data for a bathing water.

(5) 7 days after the end of the short-term pollution incident, SEPA must, if necessary, take an additional sample to ensure that it has the minimum number required for the bathing water for the bathing season.

(6) The number of samples disregarded under sub-paragraph (2) by SEPA must represent no more than the greater of—

- (a) 15 percent of the total number of samples provided for in the monitoring calendars for the relevant assessment period and that bathing season; or
- (b) one sample per bathing season.

PART 2

CYANOBACTERIA

5. Where any bathing water profile indicates a potential for cyanobacterial proliferation, SEPA must monitor that bathing water at the frequency necessary to allow adequate management measures to be put in place in accordance with regulation 14.

PART 3

OTHER POLLUTION

6. SEPA and the relevant local authority must each establish a visual monitoring programme at every bathing water at the frequency necessary to allow adequate management measures to be put in place in accordance with regulation 16.

PART 4

MACRO-ALGAE AND MARINE PHYTOPLANKTON

7. Where any bathing water profile indicates a tendency for proliferation of macro-algae or marine phytoplankton, SEPA must carry out such investigations at that bathing water as are necessary to—

- (a) determine whether such proliferation constitutes a health risk to bathers; and
- (b) allow adequate management measures to be put in place in accordance with regulation 15.

SCHEDULE 3

Regulation 10

STANDARDS

1. SEPA must use the following standards for classification–

Standards for inland waters

<i>Parameter</i>	<i>“Excellent”</i>	<i>“Good”</i>	<i>“Sufficient”</i>
Intestinal enterococci ⁽¹⁾	200 ⁽²⁾	400 ⁽²⁾	330 ⁽³⁾
Escherichia coli ⁽¹⁾	500 ⁽²⁾	1,000 ⁽²⁾	900 ⁽³⁾

Standards for coastal and transitional waters

<i>Parameter</i>	<i>“Excellent”</i>	<i>“Good”</i>	<i>“Sufficient”</i>
Intestinal enterococci ⁽¹⁾	100 ⁽²⁾	200 ⁽²⁾	185 ⁽³⁾
Escherichia coli ⁽¹⁾	250 ⁽²⁾	500 ⁽²⁾	500 ⁽³⁾

⁽¹⁾ Colony forming units per 100 millilitres (“cfu/100 ml”).

⁽²⁾ Based upon a 95-percentile evaluation – see paragraph 2.

⁽³⁾ Based upon a 90-percentile evaluation – see paragraph 2.

Methodology

2.—(1) In this Schedule, “percentile value” is based on a percentile evaluation of the log₁₀ normal probability density function of microbiological data used for the assessment under regulation 9.

(2) SEPA must derive a percentile value as follows–

- (a) take the log₁₀ value of all bacterial concentrations in the data sequence to be evaluated or, if a zero value is obtained, take the log₁₀ value of the minimum detection limit of the analytical method used;
- (b) calculate the arithmetic mean (“μ”) of the log₁₀ values taken under paragraph (a);
- (c) calculate the standard deviation (“σ”) of the log₁₀ values taken under paragraph (a);
- (d) derive the upper 90-percentile point of the data probability density function from the following equation: upper 90-percentile = antilog (μ + 1.282 σ); and
- (e) derive the upper 95-percentile point of the data probability density function from the following equation: upper 95-percentile = antilog (μ + 1.645 σ).

Classification

3.—(1) At the end of every bathing season, SEPA must classify a bathing water as “poor” if, in the set of bathing water quality data, the percentile values for microbiological enumerations are higher than the “sufficient” standards set out in paragraph 1.

(2) At the end of every bathing season, SEPA must classify a bathing water as “sufficient” if–

- (a) in the set of bathing water quality data, the percentile values for microbiological enumerations are equal to or lower than the “sufficient” standards set out in paragraph 1; and

- (b) the bathing water is not classifiable as “good” or “excellent”.
- (3) At the end of every bathing season, SEPA must classify a bathing water as “good” if–
 - (a) in the set of bathing water quality data, the percentile values for microbiological enumerations are equal to or lower than the “good” standards set out in paragraph 1; and
 - (b) the bathing water is not classifiable as “excellent”.
- (4) At the end of every bathing season, SEPA must classify a bathing water as “excellent” if, in the set of bathing water quality data, the percentile values for microbiological enumerations are equal to or lower than the “excellent” standards set out in paragraph 1.

Short-term Pollution

4. Where a bathing water is subject to incidents of short-term pollution, it may only be classified under paragraph 3 as “sufficient”, “good” or “excellent” if the number of samples disregarded is in accordance with paragraph 4 of Schedule 2 and the required information has been provided and management measures are in place in accordance with regulations 8 and 12.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the purpose of implementing, in Scotland, Directive 2006/7/EC of the European Parliament and of the Council concerning the management of bathing water quality and repealing Directive 76/160/EEC (O.J. L 64, 4.3.2006, p.37).

Regulation 3 makes provision in relation to identifying bathing waters and the length of the bathing season.

Regulation 4 sets out general duties on the Scottish Ministers, local authorities and the Scottish Environment Protection Agency (SEPA) in order to secure compliance with Directive 2006/7/EC.

Regulation 5 sets out duties on the Scottish Ministers to ensure public participation, particularly in the establishment, review and updating of the lists of bathing waters.

Regulation 6 obliges SEPA to establish a bathing water profile at every bathing water. The minimum contents of the bathing water profile are set out in Schedule 1.

Regulation 7 sets out the general monitoring obligations incumbent upon SEPA and Local Authorities at bathing waters. The monitoring obligations are set out in detail in Schedule 2.

Regulation 8 obliges: the local authorities to make public certain information on signs erected at the bathing water, SEPA to supply the local authorities with certain information and for SEPA to publish certain information on its website.

Under regulations 9 and 10 SEPA must assess the bathing water quality data gathered under its monitoring programme and then classify each bathing water as “poor”, “sufficient”, “good” or “excellent”. Schedule 3 sets out the meaning of each classification.

Regulations 11-16 set out the management measures that are to be taken at bathing waters that are subject to pollution.

Regulations 17-19 contain certain general provisions which relate to the discharge of local authority functions and in relation to the discharge by SEPA and local authorities of their consultation obligations.

Regulations 20-22 contain amending, transitional and revoking provisions.

A transposition note and Regulatory Impact Assessment have been prepared in connection with these regulations. A copy of each may be obtained from the Scottish Government, Water, Air, Soils and Flooding Division, Victoria Quay, Edinburgh EH6 6QQ.

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ENVIRONMENTAL PROTECTION

WATER

The Bathing Waters (Scotland) Regulations 2008

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