

2008 No. 1097

WATER RESOURCES

The Bathing Water Regulations 2008

Made - - - - *16th April 2008*

Laid before Parliament *21st April 2008*

Laid before the National Assembly for Wales *21st April 2008*

Coming into force in accordance with regulation 1

The Secretary of State and the Welsh Ministers have been designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to measures relating to water resources.

The Secretary of State in relation to England and Scotland^(c) and the Welsh Ministers in relation to Wales make the following Regulations, in exercise of the powers conferred by that section:

PART 1

GENERAL PROVISIONS

Citation, commencement and extent

- 1.—(1) These Regulations may be cited as the Bathing Water Regulations 2008.
- (2) The following provisions come into force on 14th May 2008—
 - (a) this regulation and regulations 2 to 7;
 - (b) in regulation 14(2), sub-paragraph (a) and regulation 14(1), in so far as it relates to that sub-paragraph;
 - (c) regulation 17; and
 - (d) in Schedule 3, in paragraph 2(1), paragraph (a) and regulation 8, in so far as it relates to that paragraph.
- (3) The following provisions come into force on 24th March 2012—
 - (a) the remaining provisions in regulation 8;
 - (b) regulations 9 and 12;
 - (c) in regulation 14(2)—

(a) S.I. 2003/2901. By virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32), functions conferred on the National Assembly for Wales are now exercisable by the Welsh Ministers.

(b) 1972 c. 68.

(c) The power of the Secretary of State to make regulations in relation to matters as regards Scotland is preserved by section 57(1) of the Scotland Act 1998 (c. 46).

- (i) sub-paragraph (b) and regulation 14(1) in so far as it relates to that sub-paragraph; and
 - (ii) paragraph (2)(c)(v);
 - (d) regulation 14(3) and (4); and
 - (e) regulations 16 and 18.
- (4) All remaining provisions come into force on 24th March 2015.
- (5) Subject to paragraph (6), these Regulations extend to England and Wales only.
- (6) Any amendment or revocation made by these Regulations has the same extent as the enactment being amended or revoked.

Interpretation

2.—(1) In these Regulations—

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

“the Agency” means the Environment Agency;

“Agency management measures” means measures in relation to a bathing water taken by the Agency—

- (a) to reduce the risk of pollution (being measures within the Agency’s responsibilities referred to in regulation 5); or
- (b) under regulations 7 to 11;

“the appropriate Minister” means—

- (a) in relation to a bathing water in England, the Secretary of State; or
- (b) in relation to a bathing water in Wales, one of the Welsh Ministers;

“bathing season” means the period specified in regulation 4;

“a bathing water” means an area of surface water identified under regulation 3;

“control”, in relation to a bathing water, means control of the land immediately adjacent to the bathing water which is normally used to access the bathing water from the landward side and, where the bathing water is tidal, control of such land above the high water mark;

“the Bathing Water Directive” means 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(a);

“bathing water profile” means the profile established under regulation 7;

“cyanobacterial proliferation” means an accumulation of cyanobacteria including in the form of a bloom, mat or scum;

“England” includes the territorial sea adjacent to England and not forming any part of Wales;

“local authority” means—

- (a) in England, the council of any district, the unitary authority of a place in which there are no districts, the council of a London borough, the Common Council of the City of London or the Council of the Isles of Scilly; or
- (b) in Wales, the council of a county or county borough;

“local authority management measures” means measures taken, under regulation 9, by a local authority in relation to a bathing water which it controls—

- (a) to give information to the public; or
- (b) to prevent, by means of public information, bathers’ exposure to pollution;

(a) OJ No L64, 4.3.2006, p.37.

“management measures” means Agency management measures, local authority management measures or private controller management measures;

“permanent advice against bathing” means advice issued, in relation to at least one whole bathing season, under regulation 13;

“pollution” means contamination which affects bathing water quality and presents a risk to bathers’ health from the following—

- (a) intestinal enterococci or *Escherichia coli*;
- (b) cyanobacterial proliferation;
- (c) a proliferation of macro-algae or marine phytoplankton;
- (d) waste, including tarry residues, glass, plastic or rubber;

“private controller” of a bathing water means a person, other than a local authority, who controls the bathing water;

“private controller management measures” means measures taken, under regulation 9, by a private controller of a bathing water in relation to the bathing water—

- (a) to give information to the public; or
- (b) to prevent, by means of public information, bathers’ exposure to pollution;

“relevant measures for short-term pollution” in relation to a bathing water means measures, of the following kinds, for identifying the causes of, predicting, and dealing with, short-term pollution at the bathing water—

- (a) Agency management measures;
- (b) the establishment of surveillance and early warning systems with a view to preventing bathers’ exposure to the short-term pollution by means of public information under regulation 14;
- (c) measures taken by the Agency (as part of its responsibilities referred to in regulation 5) to prevent, reduce or eliminate the causes of the short-term pollution;

“set of bathing water quality data” means data obtained from results of samples taken under Part 1 of Schedule 3;

“short-term pollution” means contamination by intestinal enterococci or *Escherichia coli* where the Agency—

- (a) has identified the causes; and
- (b) does not normally expect the contamination to affect bathing water quality for more than approximately 72 hours after the bathing water is first affected;

“Wales” has the meaning given by section 158 of the Government of Wales Act 2006(a); and

“the Water Framework Directive” means Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy(b).

(2) In these Regulations, “coastal water”, “groundwater”, “inland water”, “surface water” and “transitional waters” have the same meaning as in the Water Framework Directive and those definitions, together with other relevant definitions from that Directive, are set out in Schedule 1 to these Regulations.

Identification of bathing waters

3.—(1) For the purposes of these Regulations—

- (a) the surface waters on the English list are identified as bathing waters in relation to England; and

(a) 2006 c. 32.

(b) OJ No L327, 22.12.2000, p. 1, as amended.

- (b) the surface waters on the Welsh list are identified as bathing waters in relation to Wales.
- (2) The Secretary of State and the Agency must publish the English list on their respective websites.
- (3) The Welsh Ministers and the Agency must publish the Welsh list on their respective websites.
- (4) In this regulation—
- (a) “the English list” means the list entitled “Bathing Waters (England) 2008”, held at the principal office of the Department for Environment, Food and Rural Affairs (which is at Nobel House, 17 Smith Square, London SW1P 3JR)(a); and
- (b) “the Welsh list” means the list entitled “Bathing Waters (Wales) 2008” deposited in the library of the Welsh Assembly Government at Cathays Park, Cardiff, CF10 3NQ(b).
- (5) For the purposes of giving effect to the Bathing Water Directive, section 104(1) of the Water Resources Act 1991(c) (meaning of “controlled waters”) has effect as if “inland freshwaters” included any lake or pond (other than a relevant lake or pond within the meaning of that section) identified under this regulation.

Length of the bathing season

4. For the purposes of these Regulations, the bathing season in England and Wales begins on 15th May and ends at the end of the day on 30th September in each year.

General duties

5.—(1) The Secretary of State, the Welsh Ministers and the Agency must exercise their relevant functions in England and Wales—

- (a) so as to ensure that, by the end of the bathing season in 2015, all bathing waters are classified under regulation 11 as “sufficient”;
- (b) so as to take such realistic and proportionate measures as they each consider appropriate with a view to increasing the number of bathing waters classified under regulation 11 as “good” or “excellent”; and
- (c) in all other respects, so as to secure compliance with the requirements of the Bathing Water Directive.

(2) In this regulation, “relevant functions” means functions, so far as relevant, under the enactments listed in Schedule 2 (relevant functions) to the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003(d).

(3) In the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003, in Schedule 2 (relevant functions), in Part 2 (subordinate instruments), after paragraph 28, insert—

“29. The Bathing Water Regulations 2008.”.

(4) In the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004(e), in Schedule 2 (relevant functions), in Part 2 (subordinate instruments), after paragraph 27, insert—

“28. The Bathing Water Regulations 2008.”.

(5) The Agency must promptly provide—

- (a) to the appropriate Minister such information about the quality of bathing waters as the appropriate Minister may by notice reasonably require;

(a) The list is also available on the Department’s website: www.defra.gov.uk.

(b) The list is also available from the Welsh Assembly Government’s website at www.wales.gov.uk.

(c) 1991 c. 57.

(d) S.I. 2003/3242.

(e) S.I. 2004/99.

- (b) to a local authority such information about the quality of the bathing waters in its area as it may by notice reasonably require; and
- (c) to a private controller such information as the Agency considers the private controller requires for the purposes of the private controller's functions under these Regulations.

Public participation

- 6.—(1) The Secretary of State, the Welsh Ministers and the Agency must—
- (a) encourage public participation in the exercise of their respective functions under these Regulations; and
 - (b) ensure that the public has an opportunity—
 - (i) to find out how to participate; and
 - (ii) to submit suggestions, comments or complaints.

(2) The Secretary of State, the Welsh Ministers and the Agency must take due account of any suggestions, comments or complaints they have obtained from the public when exercising their respective functions under these Regulations.

PART 2

BATHING WATER PROFILES

Bathing water profiles

- 7.—(1) The Agency must—
- (a) establish a bathing water profile before 24th March 2011, for every bathing water; and
 - (b) keep every bathing water profile under review.
- (2) The Agency may combine the bathing water profiles of contiguous bathing waters.
- (3) When complying with paragraph (1), the Agency must take into account the data which it has obtained or analysed under—
- (a) the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003;
 - (b) the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003; or
 - (c) the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004.
- (4) Schedule 2 (bathing water profiles) has effect.

PART 3

MONITORING ETC. OF BATHING WATERS AND PUBLIC INFORMATION

Monitoring etc.

- 8.—(1) The Agency must establish a monitoring programme for every bathing water.
- (2) The monitoring programme for intestinal enterococci and *Escherichia coli* must be in accordance with Part 1 of Schedule 3.
- (3) The Agency must undertake appropriate monitoring for cyanobacteria in accordance with Part 2 of Schedule 3.
- (4) The Agency must undertake investigations for macro-algae and marine phytoplankton in accordance with Part 3 of Schedule 3.

(5) The Agency must undertake visual inspections for waste, including tarry residues, glass, plastic or rubber in accordance with Part 4 of Schedule 3.

(6) After the end of every bathing season, the Agency must notify the appropriate Minister, giving reasons, if it has suspended the monitoring calendar in accordance with paragraph 2 of Schedule 3.

Public information

9.—(1) Every local authority or private controller that controls a bathing water must ensure that the following information about the bathing water is available during the bathing season in an easily accessible place in the vicinity of the bathing water—

- (a) the bathing water’s current classification pursuant to regulation 11;
- (b) any advice against bathing which has been introduced there, giving reasons;
- (c) a general description of the bathing water, in non-technical language, based on its bathing water profile;
- (d) information on the nature and expected duration of abnormal situations there; and
- (e) an indication of the sources of more complete information published in accordance with paragraph (4).

(2) In relation to every bathing water, the Agency must publish on its website the following information—

- (a) the information referred to in paragraph (1);
- (b) before the start of every bathing season, the bathing water’s classification in accordance with regulation 11 over the last three years;
- (c) the current bathing water profile;
- (d) as soon as possible after the completion of the analysis under Schedule 3, the results of the monitoring carried out in accordance with regulation 8(2) since the beginning of the current bathing season; and
- (e) where the bathing water is classified as “poor” under regulation 11, information as to—
 - (i) the causes of pollution there; and
 - (ii) the management measures being taken there under regulation 13.

(3) The Agency must—

- (a) prepare a general description of every bathing water for use under paragraph (1)(c); and
- (b) make the descriptions available to local authorities and private controllers.

(4) Public information under these Regulations must—

- (a) wherever possible, be provided using a geographic information system; and
- (b) be presented in a clear and coherent manner.

PART 4

BATHING WATER ASSESSMENT AND CLASSIFICATION

Assessment

10.—(1) After the end of every bathing season, for every bathing water, the Agency 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) In this regulation, the “relevant assessment period” is—

- (a) the immediately preceding three bathing seasons;
 - (b) the immediately preceding two bathing seasons, if the Agency so determines in accordance with paragraph (3); or
 - (c) the number of immediately preceding bathing seasons, being less than three, that the Agency determines in accordance with paragraph (4).
- (3) The Agency may make a determination under paragraph (2)(b) where—
- (a) it has consulted the appropriate Minister; and
 - (b) it is at least five years since the last change in the relevant assessment period.
- (4) The Agency may make a determination under paragraph (2)(c), if—
- (a) it has consulted the appropriate Minister;
 - (b) the set of bathing water quality data used is based on at least 16 samples; and
 - (c) it considers that any factors identified in the bathing water profile as likely to affect the classification of the bathing water under regulation 11 have changed, and the set of bathing water quality data used is based only on samples taken since those factors have changed.

Classification

11. At the end of every bathing season, on the basis of the assessment made under regulation 10, the Agency must classify every bathing water as “poor”, “sufficient”, “good” or “excellent” in accordance with Schedule 4.

PART 5

MANAGEMENT OF BATHING WATERS

Management measures at bathing waters subject to pollution incidents

12.—(1) This regulation applies where a body or person mentioned in paragraph (2) is aware of—

- (a) an incident of contamination by intestinal enterococci or *Escherichia coli*, other than an incident of short-term pollution to which regulation 15 applies, that the body or person considers may pose a risk to bathing water quality and bathers’ health;
- (b) a cyanobacterial proliferation which the body or person considers may pose a risk to bathers’ health;
- (c) a proliferation of macro-algae or marine phytoplankton which the body or person considers is unacceptable or may pose a risk to bathers’ health;
- (d) the presence of waste, including tarry residues, glass, plastic or rubber; or
- (e) any other incident, other than an incident of short-term pollution to which regulation 15 applies, that the body or person considers may pose a risk to bathing water quality and bathers’ health.

(2) The bodies and persons are:

- (a) the Agency;
- (b) a sewerage undertaker;
- (c) a local authority, or
- (d) in the case of a bathing water that has a private controller, the private controller.

(3) The Agency must promptly—

- (a) consult—
 - (i) the local authority in whose area the bathing water is situated;

- (ii) if the bathing water is controlled by a private controller, the private controller; and
 - (iii) if necessary, the local sewerage undertaker; and
- (b) take, or cause to be taken, such Agency management measures as the Agency considers adequate to protect bathers' health.
- (4) The sewerage undertaker must, if necessary, promptly consult—
 - (a) the Agency;
 - (b) the local authority in whose area the bathing water is situated; and
 - (c) where the bathing water is controlled by a private controller, the private controller.
- (5) If the bathing water is controlled by a local authority, the local authority must promptly—
 - (a) consult the Agency so far as necessary;
 - (b) notify the local sewerage undertaker, if necessary;
 - (c) take such local authority management measures as it considers adequate to protect bathers' health; and
 - (d) in the case of pollution by waste, remove the waste.
- (6) If the bathing water is controlled by a private controller—
 - (a) the local authority must, where necessary, promptly—
 - (i) consult the Agency and the private controller; and
 - (ii) notify the local sewerage undertaker; and
 - (b) the private controller must promptly—
 - (i) consult the Agency and the local authority so far as necessary;
 - (ii) take such private controller management measures as the controller considers adequate to protect bathers' health; and
 - (iii) in the case of pollution by waste, remove the waste.

Additional management measures at “poor” bathing waters

- 13.—**(1) Where the Agency classifies a bathing water as “poor” under regulation 11—
- (a) the Agency must, during the bathing season following this classification—
 - (i) take, or cause to be taken, such Agency management measures at the bathing water as it considers adequate with a view to preventing bathers' exposure to pollution;
 - (ii) notify the local authority or private controller that controls the bathing water; and
 - (iii) identify the reasons why the bathing water failed to achieve a classification of “sufficient”;
 - (b) if the bathing water is controlled by a local authority, the local authority must—
 - (i) take such local authority management measures there as it considers adequate with a view to preventing bathers' exposure to pollution; and
 - (ii) introduce advice against bathing there by means of public information under regulation 9; and
 - (c) if the bathing water is controlled by a private controller, the private controller must—
 - (i) take such private controller management measures there as the private controller considers adequate with a view to preventing bathers' exposure to pollution; and
 - (ii) introduce advice against bathing there by means of public information under regulation 9.
- (2) Paragraphs (3) to (5) apply to a bathing water if—
- (a) the Agency has classified the bathing water as “poor” under regulation 11 for five consecutive years; or

- (b) having consulted the local authority or private controller that controls the bathing water, the Agency advises the appropriate Minister that it considers that it would be infeasible or disproportionately expensive for the bathing water to achieve a classification of “sufficient” and the appropriate Minister accepts that advice.

(3) The Agency must notify the local authority or private controller that controls the bathing water that permanent advice against bathing must be introduced there, giving reasons.

(4) If the bathing water is controlled by a local authority, the local authority must introduce permanent advice against bathing there by means of public information under regulation 9.

(5) If the bathing water is controlled by a private controller, the private controller must introduce permanent advice against bathing there by means of public information under regulation 9.

Public information and general provisions about short-term pollution

14.—(1) This regulation applies where, having consulted the local authority or private controller that controls a bathing water, the Agency has established relevant procedures for short-term pollution at the bathing water.

(2) The Agency must—

- (a) ensure that the bathing water profile established under regulation 7 contains—
 - (i) information as to the anticipated nature, frequency and duration of expected short-term pollution;
 - (ii) details of any remaining causes of short-term pollution;
 - (iii) details of the Agency management measures taken and the time schedule for the elimination of the causes of the short-term pollution; and
 - (iv) information on relevant procedures for short-term pollution taken during a short-term pollution incident and the identity and contact details of any person responsible for taking such action;
- (b) notify the local authority or private controller that controls the bathing water when short-term pollution is predicted there; and
- (c) publish on its website the following information—
 - (i) the conditions likely to lead to short-term pollution at the bathing water;
 - (ii) the likelihood of short-term pollution there and its likely duration;
 - (iii) the causes of short-term pollution there;
 - (iv) the relevant procedures for short-term pollution in place there; and
 - (v) the information referred to in paragraphs (3) and (4).

(3) If the bathing water is controlled by a local authority, the local authority must ensure that the following information is available during the bathing season in the place referred to in regulation 9(1)—

- (a) an indication of the number of days for which advice against bathing was introduced there during the immediately preceding bathing season because of short-term pollution; and
- (b) a warning whenever short-term pollution is predicted or present there.

(4) If the bathing water is controlled by a private controller, the private controller must ensure that the following information is available during the bathing season in the place referred to in regulation 9(1)—

- (a) an indication of the number of days for which advice against bathing was introduced there during the immediately preceding bathing season because of short-term pollution; and
- (b) a warning whenever short-term pollution is predicted or present there.

(5) In the event of short-term pollution, the Agency must take one additional sample, as soon as possible after the pollution incident is presumed to have ended, to verify that it has in fact ended.

(6) The Agency may exclude samples taken during short-term pollution from the set of bathing water quality data for the bathing water if—

- (a) as soon as possible after the end of a short-term pollution incident, the Agency has taken the additional sample required by paragraph (5) in order to verify that the incident has ended;
- (b) the Agency has not included that sample in the set of bathing water quality data for the bathing water; and
- (c) seven days after the end of a short-term pollution incident, the Agency has, if necessary, taken an additional sample to ensure that it has the minimum number required for the bathing water for the bathing season.

(7) The Agency must not classify the bathing water under regulation 11 as “sufficient”, “good” or “excellent” unless the number of samples disregarded under paragraph (6) represents no more than the greater of—

- (a) 15% of the total number of samples provided for in the monitoring calendars established under paragraph 2 of Schedule 3 for the same period; and
- (b) one sample per bathing season.

Relevant procedures for short-term pollution

15. Where there is short-term pollution at a bathing water to which regulation 14 applies—

- (a) the Agency must—
 - (i) notify the local authority or private controller that controls the bathing water; and
 - (ii) operate, or cause to be operated, any relevant procedures for short-term pollution which are not in operation for which it is responsible;
- (b) where the bathing water is controlled by a local authority, the local authority must—
 - (i) take the local authority management measures which form part of the relevant procedures for short-term pollution there; and
 - (ii) ensure that notification that the bathing water is affected by short-term pollution is available in the place referred to in regulation 9(1); and
- (c) where the bathing water is controlled by a private controller, the private controller must—
 - (i) take the private controller management measures which form part of the relevant procedures for short-term pollution there; and
 - (ii) ensure that notification that the bathing water is affected by short-term pollution is available in the place referred to in regulation 9(1).

PART 6

FINAL PROVISIONS

Enforcement

16.—(1) If the appropriate Minister becomes aware that a local authority or private controller has failed in the local authority’s or private controller’s duties under these Regulations, the appropriate Minister may, by notice to the local authority or private controller, specify—

- (a) measures to be taken by the local authority or private controller to comply with these Regulations; and
- (b) the deadline by which those measures must be taken.

(2) The appropriate Minister must consider any representations received from the local authority or private controller on the notice, and may amend or withdraw the notice.

(3) If the measures specified have not been taken by the deadline specified, the appropriate Minister may—

- (a) take the measures; or
- (b) apply to the High Court for an order requiring the local authority or private controller to comply with these Regulations.

(4) Section 108 of the Environment Act 1995(a) (powers of enforcing authorities and persons authorised by them) has effect in relation to England and Wales as if—

- (a) “pollution control functions” in relation to the Secretary of State, the Agency and the Welsh Ministers includes their respective functions under these Regulations; and
- (b) the powers in paragraph (4) of that section included the power to take any measure required of a local authority or private controller under these Regulations.

(5) Section 202(2) of the Water Resources Act 1991 (information in connection with the control of pollution) has effect as if it conferred power on the Secretary of State, the Welsh Ministers and the Agency to require the furnishing of information reasonably required for the purposes of giving effect to the Bathing Water Directive.

Guidance

17. The appropriate Minister may give guidance to the Agency, any local authority or any private controller with respect to the practical implementation of the Bathing Water Directive, and the person to whom guidance is given shall have regard to it.

Amendment of the The Bathing Waters (Classification) Regulations 1991 and transitional provisions

18.—(1) In the Bathing Waters (Classification) Regulations 1991(b)—

- (a) omit regulation 2(3), substitute—

“(3) The criterion for a bathing water’s achieving the classification BW1 is that at least 95% of samples of waters meet the parametric value of 2,000 per 100 millilitres for *Escherichia coli*.

(4) For the purposes of paragraph (3), water samples are to be taken and tested in accordance with the sampling and testing procedures set out in Part 1 of Schedule 3 to the Bathing Water Regulations 2008(c).”; and

- (b) omit Schedules 1, 2 and 3.

(2) Every notice served on the Agency under section 83 of the Water Resources Act 1991 (water quality objectives) in relation to classification BW1, and every notice which has effect as if so served, has effect subject to the transitional provisions in paragraph (1).

(3) The National Rivers Authority (Bathing Waters) Directions 1992(d) have effect as if—

- (a) 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
- (b) conformity with the values which appear in column G of that Annex were met where—
 - (i) at least 90% 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
 - (ii) at least 80% of samples of waters taken and tested in accordance with these Regulations for *Escherichia coli* meet the parametric value of 100 per 100 millilitres.

(a) 1995 c. 25.

(b) S.I. 1991/1597. Those Regulations will be revoked by regulation 19 when that regulation comes into force.

(c) S.I. 2008/1097

(d) Copies are available from the Department for Environment, Food & Rural Affairs, Water Quality Division, Ergon House, Horseferry Road, London SW1P 2AL.

(e) OJ No L31, 5.2.1976, p 1, as amended.

(4) Until the Agency classifies a bathing water under regulation 11, for the purposes of regulation 9, the Agency 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.

Revocations and other amendments

19.—(1) The Bathing Waters (Classification) Regulations 1991 and the Bathing Waters (Classification) (England) Regulations 2003^(a) are revoked.

(2) In the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003, in Schedule 2 (relevant functions), in Part 2 (subordinate instruments), omit paragraphs 11 and 26.

(3) In the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004, in Schedule 2 (relevant functions), in Part 2 (subordinate instruments), omit paragraphs 11 and 26.

Signed by authority of the Secretary of State

3rd April 2008

Phil Woolas
Minister of State,
Department for Environment, Food and Rural Affairs

Jane Davidson
16th April 2008 Minister for Environment, Sustainability and Housing, one of the Welsh Ministers

^(a) S.I. 2003/1238.

DEFINITIONS FROM THE WATER FRAMEWORK DIRECTIVE

“Body of surface water” means a discrete and significant element of surface water such as a lake, a reservoir, a stream, river or canal, part of a stream, river or canal, a transitional water or a stretch of coastal water.

“Coastal water” means surface water on the landward side of a line, every point of which is at a distance of one nautical mile on the seaward side from the nearest point of the baseline from which the breadth of territorial waters is measured^(a), extending where appropriate up to the outer limit of transitional waters.

“Groundwater” means all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil.

“Inland water” means all standing and flowing water on the surface of the land, and all groundwater on the landward side of the baseline from which the breadth of the territorial sea is measured.

“Lake” means a body of standing inland surface water.

“River” means a body of inland water flowing for the most part on the surface of the land but which may flow underground for part of its course.

“Surface water” means inland waters, except groundwater; transitional waters and coastal waters except in respect of chemical status for which it shall also include territorial waters.

“Transitional waters” are bodies of surface water in the vicinity of river mouths which are partly saline in character as a result of their proximity to coastal waters but which are substantially influenced by freshwater flows.

(a) The relevant baseline, for the purposes of this definition and the definition of “inland water”, is that from which the breadth of the territorial sea is measured and is established by section 1 of the Territorial Sea Act 1987 (c. 49) and the Territorial Waters Order in Council (1965 III, p. 6452A).

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; and
- (e) identify the location of the monitoring point.

(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 11, the Agency must review, and if necessary update, the bathing water profile—

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

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

SCHEDULE 3

Regulation 8

MONITORING ETC.

PART 1

INTESTINAL ENTEROCOCCI AND *ESCHERICHIA COLI*

Location of monitoring point

1. The Agency must—
 - (a) at every bathing water, locate the monitoring point where most bathers are expected; and
 - (b) subject to paragraph 7, where possible, take samples 30 centimetres below the water's surface and in water that is at least one metre deep.

Monitoring calendar

- 2.—(1) The Agency must—
 - (a) establish a monitoring calendar for every bathing water before the start of every bathing season; and
 - (b) take samples at every bathing water no later than four days after the date specified in the monitoring calendar.
- (2) In relation to any abnormal situation—
 - (a) the Agency may suspend the monitoring calendar for the duration of the situation; and
 - (b) as soon as possible after the end of the situation, the Agency must take sufficient additional samples to replace those missing due to the suspension and to ensure that it has the minimum number required for the bathing water for the bathing season.

Frequency of monitoring

3. The Agency must—
 - (a) take and analyse at least four samples from every bathing water in relation to every bathing season;
 - (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 intervals not exceeding one month.

Sampling equipment

- 4.—(1) Subject to paragraph 7, the Agency must only use sampling bottles which—
 - (a) have been—
 - (i) sterilised in an autoclave for at least 15 minutes at 121 degrees Celsius;
 - (ii) dry sterilised at no lower than 160 degrees Celsius and no higher than 170 degrees Celsius for at least one hour; or
 - (iii) irradiated by their manufacturer and not used previously;
 - (b) are of a size which allows sufficient water to be taken and analysed for the presence of intestinal enterococci and *Escherichia coli*; and

- (c) are made of transparent and colourless material.
- (2) The Agency must—
- (a) use aseptic techniques to maintain the sterility of the sample bottles; and
 - (b) clearly identify every sample taken by marking in indelible ink the sample bottle and associated paperwork.

Storage and transport of samples before analysis

- 5.—(1) Subject to paragraph 7, the Agency must—
- (a) at all times, protect every sample taken from exposure to light, and in particular, direct sunlight; and
 - (b) conserve every sample at a temperature of around 4 degrees Celsius between sampling and laboratory analysis.
- (2) In relation to any sample, if the interval between sampling and laboratory analysis is likely to exceed four hours, the Agency must conserve the sample in a refrigerator.
- (3) The Agency must ensure that the time between sampling and laboratory analysis does not exceed 24 hours and must use its best endeavours to keep this time as short as possible.

Reference methods of analysis

6. Subject to paragraph 7, the Agency must use the following reference methods of analysis—
- (a) for intestinal enterococci, ISO 7899-1 or ISO 7899-2; and
 - (b) for *Escherichia coli*, ISO 9308-3 or ISO 9308-1.

General provisions in relation to rules or reference methods of analysis

7. The Agency—
- (a) must have regard to the guidelines on the handling of samples for microbiological analyses given in Annex V to the Bathing Water Directive; and
 - (b) may use such rules or reference methods of analysis as it considers are substantively equivalent to those specified in this Schedule, where the Agency has notified the appropriate Minister giving details of such rules and methods and their equivalence.

PART 2

CYANOBACTERIA

8. Where any bathing water profile indicates a potential for cyanobacterial proliferation, the Agency must undertake appropriate monitoring at the bathing water at the frequency necessary to allow adequate management measures to be put in place in accordance with regulation 12.

PART 3

MACRO-ALGAE AND MARINE PHYTOPLANKTON

9. Where any bathing water profile indicates a tendency for proliferation of macro-algae or marine phytoplankton, the Agency must undertake investigations at the bathing water to allow adequate management measures to be put in place in accordance with regulation 12.

PART 4

WASTE

10. The Agency must undertake visual inspections at every bathing water at the frequency necessary to allow adequate management measures to be put in place in accordance with regulation 12.

SCHEDULE 4

Regulation 11

CLASSIFICATION

Standards

1. The Agency 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⁾
<i>Escherichia coli</i> ⁽¹⁾	500 ⁽²⁾	1,000 ⁽²⁾	900 ⁽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.

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⁾
<i>Escherichia coli</i> ⁽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 10.

(2) The Agency 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 + 1.65 σ).

Classification

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

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

- (a) in the set of bathing water quality data, the percentile values for microbiological concentrations 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, the Agency must classify a bathing water as “good” if—
- (a) in the set of bathing water quality data, the percentile values for microbiological concentrations 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, the Agency must classify a bathing water as “excellent” if, in the set of bathing water quality data used, the percentile values for microbiological concentrations are equal to or lower than the “excellent” standards set out in paragraph 1.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the purpose of implementing, in England and Wales, 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 (OJ L64, 4.3.2006, p.37) (“the Bathing Water Directive”). The Bathing Water Directive is available from the Europa website at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006L0007:EN:NOT>.

Regulations 3 and 4 make provision in relation to identifying bathing waters and the length of the bathing season.

Regulations 5 and 6 set out general duties imposed on the Secretary of State, the Welsh Ministers and the Environment Agency (“the Agency”) in order to secure compliance with the Bathing Water Directive, including in relation to public participation.

Under regulations 7 and 8, the Agency must establish a bathing water profile for every bathing water and establish a suitable monitoring programme.

Regulation 9 requires any local authority or other person that controls a bathing water to make certain information available in the vicinity of the bathing water. It also requires the Agency to publish certain information on its website.

Under regulations 10 and 11, the Agency must assess the bathing water quality data gathered under its monitoring programme and must classify each bathing water as “poor”, “sufficient”, “good” or “excellent”. The meaning of each classification is set out in Schedule 4.

Regulations 12 to 15 require the Agency, sewerage undertakers and local authorities and other persons that control bathing waters to take certain management measures at bathing waters which are subject to pollution. Specific measures must be taken where the bathing waters are classified as “poor”. Where the Agency has established certain procedures for dealing with a specified type of short-term pollution, special management measures and other procedures apply.

Regulations 16 to 18 contain enforcement and transitional provisions.

Regulation 19 revokes certain legislation transposing Council Directive 76/160/EEC concerning the quality of bathing water (OJ L31, 5.2.1976, p.1) which is repealed by the Bathing Water Directive.

A transposition note and full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department for Environment, Food & Rural Affairs, Water Quality Division, Ergon House, Horseferry Road, London SW1P 2AL or from the Department’s website at www.defra.gov.uk/environment/water/quality/bathing. These documents are also available from the Welsh Assembly Government, Department for Environment, Sustainability and Housing, Cathays Park, Cardiff CF10 3NQ or from the Welsh Assembly Government’s website at www.wales.gov.uk.

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