

Title: Revision of the Bathing Waters Regulations - Signage IA No: DEFRA1223 Lead department or agency: Defra Other departments or agencies:	Impact Assessment (IA)		
	Date: 03/08/2012		
	Stage: Final		
	Source of intervention: EU		
	Type of measure: Secondary legislation		
Contact for enquiries: Elaine Connolly, Water Quality, Defra. tel - 020 7238 4451 Email - bathingwater@defra.gsi.gov.uk			
Summary: Intervention and Options			RPC Opinion: Awaiting Scrutiny

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£0.093m	£0.00m	£0.00m	No
			NA

What is the problem under consideration? Why is government intervention necessary?

Under the EU Bathing Waters Directive, from March 2012 all bathing waters must display information on water quality and sources of pollution, to enable bathers to make an informed judgment on swimming. 117 of the 417 English bathing waters are outside of Local Authority control with holiday companies, charities and individuals responsible for providing the public information required. The risk of non-compliance at a number of these sites is significant and government intervention is necessary to address this. We propose to amend the Regulations to give responsibility to the relevant Local Authority. This will ensure compliance with this important public health requirement and reduce the burden on small businesses.

What are the policy objectives and the intended effects?

The policy objective is to ensure that the required public health information is provided at bathing waters to enable bathers to make an informed decision about the water quality, and that this is done in the most cost-effective manner.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0 - do nothing (do not enforce obligation on bathing water controllers)

Option 1 - Enforcement Option. We do not amend the regulations and take enforcement action for those who do not comply. Due to these costs and the risk of the information not being available at all bathing water sites, meant that this option was not preferred.

Option 2 - Local Authority Option. Amending the regulations to give responsibility, and associated funding to the Local Authorities is the preferred option. It is the lowest cost option to ensure compliance with the EU Directive, so that important public health information is provided at all sites.

We also considered a non-regulatory measure of setting up some form of grant scheme for those privately owned bathing waters where the costs of compliance could not be met, but this option was not taken further as the administrative costs would outweigh the benefits .

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 12/2020					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Enforcement of private bathing water controllers

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: -0.15

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	0	0.017	0.15

Description and scale of key monetised costs by 'main affected groups'

In order to comply with the Bathing Water Directive, there would be enforcement costs in the first year. We estimate this would amount to £77K for Defra, in cash terms, based on 25 bathing water controllers not complying. This assumes 10 days of Higher Executive Officer time per non-compliant bathing water (total £75K) and £2K for High Court Orders. There is also a cost to all private controllers for the signs, estimated at £45.6K for 117 signs every five years.

Other key non-monetised costs by 'main affected groups'

The enforcement costs which would be incurred by non-compliant controllers are not included. During the period of the enforcement action, there is a danger of increased public health risks which would arise from the delay in making information available at these sites.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	0	0	0

Description and scale of key monetised benefits by 'main affected groups'

None

Other key non-monetised benefits by 'main affected groups'

A significant un-monetised benefit arises from making information available to protect public health at the other sites which do not require enforcement action. We assume that whilst we carry out enforcement proceedings, we would not face infraction, so we avoid those potential costs.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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That there will be 25 non-compliant controllers. This figure accounts for where it has been stated by the bathing water controller to Defra staff and also for other sites where there is no known controller, or the land is unregistered.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0.000	Benefits: 0.000	Net: 0.000	No	NA

Summary: Analysis & Evidence

Policy Option 2

Description: Local Authority option

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: -0.093

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate		0.011	0.093

Description and scale of key monetised costs by 'main affected groups'

There are extra costs to Local Authorities under Option 2. These are in respect of private bathing waters and will be funded by Defra under the New Burden Rules. Signage costs (£45.6K for 117 signs) and activity costs (£2K) would be incurred twice over the 10 year period. To support the Local Authorities in meeting the requirements, an additional payment of £100 per private bathing water will be given in the first year only (total of £11.7K).

Other key non-monetised costs by 'main affected groups'

None.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate		0	0

Description and scale of key monetised benefits by 'main affected groups'

None.

Other key non-monetised benefits by 'main affected groups'

A significant un-monetised benefit arises from making information available to protect public health. This option would also ensure compliance with the Bathing Water Directive.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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There may be a small risk that Local Authorities are unwilling to take on responsibility for the provision of information at privately owned bathing waters, and the associated public health risk of bathers not having access to information on water quality. Another risk is the possible unwillingness of some private controllers to allow local authorities to erect signs on their property.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0.000	Benefits: 0.000	Net: 0.000	No	NA

Evidence Base (for summary sheets)

Introduction

The revision of the 1976 Bathing Waters Directive in 2006 brought in a new emphasis on providing information on water quality to the public. While many bathing waters have some information on the beach and its facilities, the Bathing Water Regulations 2008 bring in a new legal obligation to provide information on water quality and sources of pollution, information which is not generally available at all bathing waters at the moment. The market fails to provide this information because the benefits are external to most agents which draw revenue from bathing waters. Fragmented ownership and ownership by the third sector compounds this problem.

The new information requirements are aimed to help the user make an informed decision on bathing, as lower quality bathing water can lead to a higher risk of illness. From 2012 the new information must be displayed as required by the Directive and will contain a warning not to swim after heavy rainfall, where beaches are subject to short term pollution, and provide information on the sources of pollution which effect that bathing water. Further requirements come into force from 2015, which require the display of the official water quality classification on the bathing water – Excellent, Good, Sufficient or Poor. At bathing waters which only meet the “Poor” classification, the information must also contain advice against bathing, the “no swimming” symbol, and information on the pollution sources and action being taken to tackle it. Detailed guidance is available on the Defra website¹. Providing this information in one location at or near the bathing water is the minimum requirement of the Bathing Waters Directive.

The information at bathing waters should now be in place, and it will need to be updated for May 2016 to display the classification for the bathing water. Changes to the classification symbol on the sign may be needed annually, if the classification changes and our guidance recommends that this is planned from the outset. More regular updating is not foreseen.

The World Health Organisation advises that the most frequent adverse health outcome associated with exposure to faecally contaminated recreational water is enteric illness, which can cause nausea, diarrhoea and vomiting. A cause–effect relationship between faecal or bather-derived pollution and acute febrile respiratory illness (AFRI), which is a more severe health outcome than gastroenteritis, has also been shown. Defra’s Impact Assessment for the transposition of the Directive indicated there is a range risk from gastric illness; from under 3% at highest quality excellent waters, to more that 8% at bathing waters which only meet the “Poor” classification.

The person responsible for providing this information at bathing waters is known as the bathing water controller and is defined in the Regulations as “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”

Those who own, lease or have a mortgage on the land, as defined above, are considered to be the controller of that land.

Issue

The majority of bathing waters are controlled by Local Authorities, but 117 bathing waters out of 417 are controlled by 87 private businesses, individuals or are unregistered. Some, such as hotels and catering establishments, draw an income from visitors to the beach. It is in the interest of these controllers to have the information displayed. The others are owned by private individuals, clubs and charities and there are frequently multiple owners of the same beach. For these the incentive is much weaker and coupled with affordability concerns, gives rise to the likelihood of non-compliance and a requirement for enforcement. We estimate that there are 25 bathing waters which will not comply with the current requirements of the Directive, which has either been stated by the controller to Defra staff and other sites where there is no known controller or the land is unregistered.

Under the moratorium on small businesses we cannot provide grants to the small businesses to meet the requirements of the Directive, as we cannot put in place the domestic regulation to achieve this. This option would also increase administrative costs significantly and would not avoid the need for enforcement action at some sites. This option would also not remove the risk of having to take enforcement action, due to multi-ownership of sites.

Given the cost of enforcement we propose to change the Regulations to give the relevant Local Authority responsibility for meeting the public information requirements of the Bathing Waters Directive at all bathing waters. This will simplify the administrative arrangements for the private controllers; remove the risk of non-compliance with the Regulations and associated enforcement actions to Defra.

We informally consulted with a number of Local Authorities and private owners and felt there was support for this change prior to going out to consultation. Following consultation, 75% of respondents supported this change.

Options

- Option 0 – Baseline (do nothing)

At the moment the private bathing water controllers will have to meet the costs of providing the information to the public themselves. For bathing waters owned by Local Authorities, Defra has provided funding under the rules of the new Burdens Regulations to carry out the work. We have had strong indications from a number of private bathing water controllers that they will not comply with the Regulations, and estimate that there are 25 bathing waters which are at risk of non-compliance from conversations with land owners and land registry searches which show that land is unregistered.

There is a risk that we would face infraction by the EU, as a result of not meeting the requirements of the Regulations.

- Option 1

Under this option, in order to ensure that the requirements of the Regulations are met and information on water quality is provided to the public, Defra would take enforcement action to ensure the information is provided.

- Option 2

This option is our preferred option. We propose to change the definition of a bathing water controller to give responsibility and associated funding, to the relevant Local Authority for all bathing waters. This option maintains the provision of the required information at a local level.

- Other options considered

A further option which was given due consideration but subsequently ruled out was not to change the definition of bathing water controller, but to set up an appeal system. This option would give bathing water controllers who were unable to afford to provide the required information a way to appeal for funding from Defra to carry out the work. The operator would have to provide evidence on why they could not afford to carry out the work. In considering this option it quickly became obvious that the administrative burden associated with the operation of such a scheme would be too high. Under this option Defra would need to design and advertise an appeals procedure for private bathing water controllers, where on satisfying some agreed criteria bathing water controllers could be compensated for the costs of the signs. Unlike enforcement action, however, this could not be targeted. It would be expected that more than 25 applications would need to be dealt with and that the costs of processing the applications would be similar to the costs of enforcement action. In addition it would be expected that a proportion of applications refused would then require enforcement action. As a result the costs for this option have not been estimated as in all ways it is a worse option than Option 2. In the consultation consultees did not comment on this option at all, therefore we assume there is not public support for it.

Costs and Benefits

- **Option 0 – baseline/do nothing**

Option 0 is the baseline so there are no costs and benefits.

- **Option 1 – Private Owner Option**

Costs

It is estimated that enforcement action would need to be undertaken in 25 cases and ultimately the cost of the signs would need to be paid for – if only after the conclusion of the enforcement action. Before any enforcement action was taken, we would explore ways to meet the requirements with the controller. If this did not achieve the required outcome, enforcement action would be taken.

It is anticipated that enforcement would involve the following steps.

- Defra tackling non-compliance via the existing enforcement provisions of the regulation.
- Defra can seek a High Court order to arrange for the work to be carried out; estimated costs for a simple High Court Order are £80 (£2000 over the appraisal period).
- Additional costs are in Defra staff time to arrange the work to be carried out, and resolve any local issues (estimated at 10 days work per non-compliant bathing water).
- Once a high court order is obtained, it is assumed that the private controller would then comply and hence face the same costs as the original compliant controllers. If the Court Order was challenged, costs would be significantly higher as legal counsel would have to be retained.

As Defra does not have the power to recover enforcement costs these would continue to be borne by government. However if orders were challenged (it is assumed not) then costs might be awarded to Defra.

Again the standard cost model formulae have been used to estimate the costs of the enforcement activities. Government staff costs are estimated at £75K, based on the cost of HEO grade staff and 10 days time in undertaking the enforcement activity for each of 25 non-compliant bathing waters. Total government costs are therefore £77K (enforcement + high court orders).

In addition, the costs for the signs are borne by the private controllers under this option. This is estimated at £390 per bathing water, for a sign suitable for the coastal environment, which provides all the required information. This estimate is based on a quotation from a reputable company. The total cash cost for signs is therefore £45.6K (117 signs at £390 each), and this cost would also be incurred twice in the 10-year appraisal period. In 2015 the signs will have to be updated to reflect the classification of the bathing water and we have advised controllers to plan for this and the costs estimated here include costs for the extra information in 2015.

So the average annual costs are around £16.8K ($£77K + (£45.6K * 2)$ over 10 years). In 10-year present value terms, these costs total **£150K**.

Non-monetised costs

The costs which would otherwise be incurred by non-compliant controllers during enforcement proceedings are not included. A non-monetised cost arises from the delay in making information available to protect public health. Delay may give rise to additional cases of enteric disease/AFRI for the period between 15th May 2012 (when the bathing water season began) and when the information is displayed at the 25 sites where enforcement action may be required.

Non-monetised benefits

A very significant un-monetised benefit arises from making information available to protect public health at the sites where enforcement action is not required.

The possible cost of infraction proceedings following the failure to achieve the desired objective of the Directive (because of non-compliance) would be avoided. However it is considered unlikely that infraction proceedings would be initiated while Defra was in the process of enforcing the regulations.

- **Option 2 – Local Authority Option**

Costs

The costs of Option 2 fall to Defra, in funding the extra provision by Local Authorities of information at the 117 bathing waters which are privately owned. Specific costs are as follows:

- a) Additional activity costs for the 4 new local authorities which would become bathing water controllers. This is estimated to be £2K (based on 2 days staff time at a tariff agreed with LACORS – Local Authority Coordinators of Regulatory Services) and would be incurred every 5 years (i.e. twice in the 10-year appraisal period).
- b) The cost of the signs themselves. As described in Option 1, this is estimated at £390 per bathing water. The total cash cost for signs is £45.6K (117 signs at £390 each), and this cost would also be incurred twice in the 10-year appraisal period.
- c) Extra support for authorities in the first year. The consultation on the proposed changes had 20 responses with 75% (15) of responders supporting moving the responsibilities to Local Authorities. However Cornwall Council and some others were concerned about the numbers of bathing waters some Local Authorities would be taking on. While most Local Authorities would only be taking on 1 or 2 sites each, Cornwall will take on 56 under this option, and 9 others will be taking on 3 to 10. To support these Local Authorities, we agreed to make a one off payment for £100 per private bathing water to assist the Local Authorities in meeting the requirements at these sites. This amounts to £11.7K in total and would be incurred in the first year only.

Some of the consultation responses also raised concerns about the scale of the work needed to meet the requirements. We feel they have misunderstood the requirements of the Directive and will be providing more information to address their concerns.

The Net Present Value (NPV) of Option 2 is therefore **93K**. This makes it the lower cost option for complying with the Directive.

Non-monetised benefits

A significant un-monetised benefit arises from making information available to protect public health.

Finally there is the possible benefit of avoiding infraction proceedings following the failure to achieve the desired objective of the Directive under the do nothing Option 0 (because of non-compliance).

Risks and assumptions

The options being considered are intended to address the risk of non-compliance by simplifying the administrative process. Option 2 does this the most successfully. There may be a small risk that Local Authorities are unwilling to take on responsibility for the provision of information at privately owned bathing waters, and the associated public health risk of bathers not having access to information on water quality. Another risk is the possible unwillingness of some private controllers to allow local authorities to erect signs on their property under Option 2.

It is assumed that Local Authority staff costs are equal across options, given LGA guidance. Information on Local Authority staff costs has been developed with advice from LACORS, the national representative body for Local Authorities regulatory responsibilities. Costs for Parish Councils are based on information from their national representative group.

A ten year time period has been used. The lifetime of the signs is assumed to be five years, so signs are replaced once during the appraisal period. This means an additional £390 x 117 is included in the 10 year time period. The 5 year lifetime is understood from discussions with sign-makers providing cost estimates to be the accepted lifespan for signs in a coastal environment. This was agreed by the consultancy group Defra brought together to develop guidance on the requirements which included Local Authority beach managers.

The accuracy of the assumptions, particularly those around administrative costs for private operators, was tested through the consultation and led to us agreeing to make a one off payment for £100 per private bathing water in the first year in order to assist the Local Authorities in meeting the requirements.

Summary of preferred option with description of implementation plan.

The Bathing Water Regulations (as transposed into English legislation in 2008) aim to improve the quality of England's 417 bathing waters, and for the first time, bring in a requirement to tell bathers about water quality. This information will cover the overall water quality classification, advice of any potential risks of poor water quality (such as after heavy rainfall) and advice on any specific local issues.

We feel that there is a significant risk of information not being provided at a number of privately owned bathing waters for a range of issues including cost and burden to small businesses and the private individuals which are responsible for the bathing water. Our preferred option is to give responsibility to the Local Authorities, which we can provide with funds to do this work (Option 2). This reduces the risk of non-compliance and we will strongly encourage Local Authorities to work with private bathing water owners on the appearance of the public information.

The Environment Agency will be checking all bathing waters at least annually for this information and we hope to work with other groups as well to ensure the information provided at all sites is accurate and useful.

One-In-One Out (OIOO) Methodology

We are implementing EU minimum requirements, so this is out of scope of the OIOO rule.

Specific Impact Tests

Small firms impact test

Options 0 and 1 will impact small businesses. Private Bathing Water controllers include small businesses such as caravan parks, individuals, golf clubs and small businesses which run the beach as a business. There would have to provide the public with information on water quality as set out in the Directive. We have explored alternatives to permanent signs, such as a poster template, in order to support small businesses. But they still will have to meet the costs of displaying and updating the information as necessary.

Option 2 is the preferred option as this removes the burden on small businesses, and also is most likely to meet the requirements of the legislation. We expect Local Authorities to work with private operators to ensure that they can feed into the design process, if they desire, to ensure information is suitable for the location.

No other impacts are expected under the Specific impact tests.

ⁱ <http://www.defra.gov.uk/environment/quality/water/water-quality/bathing/>