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STATUTORY INSTRUMENTS

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**1997 No. 2470 (S. 162)**

**WATER, SCOTLAND**

**The Surface Waters (Shellfish)  
(Classification) (Scotland) Regulations 1997**

<i>Made</i>	- - - -	<i>9th October 1997</i>
<i>Laid before Parliament</i>		<i>28th October 1997</i>
<i>Coming into force</i>	- -	<i>18th November 1997</i>

The Secretary of State, in exercise of the powers conferred on him by sections 30B and 104(1) of the Control of Pollution Act 1974<sup>(1)</sup>, and, being a Minister designated<sup>(2)</sup> for the purpose of section 2(2) of the European Communities Act 1972<sup>(3)</sup> in relation to measures relating to the prevention, reduction and elimination of pollution of water, in exercise of the powers conferred on him by that section, hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Surface Waters (Shellfish) (Classification) (Scotland) Regulations 1997 and shall come into force on 18th November 1997.

(2) Expressions used in these Regulations which are also used in Directive 79/923/EEC<sup>(4)</sup> (the quality required of shellfish waters) shall have the same meaning as in that Directive.

**Classification of waters**

2. The classification SFW (“shellfish waters”), and the criteria for that classification set out in the Schedule to these Regulations, shall apply for classifying controlled waters which are coastal and brackish waters for the purposes of Directive 79/923/EEC which need protection or improvement in order to support shellfish (bivalve and gasteropod molluscs) life and growth and thus contribute to the high quality of shellfish products directly edible by man.

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(1) 1974 c. 40; section 30B was inserted, as part of a substitution of a new Part II of the Act, by the Water Act 1989 (c. 15) section 169 and Schedule 23, paragraph 4, and s104(1) was amended by the Water Act 1989, section 169 and Schedule 23, paragraph 7 and by the Environment Act 1995 (c. 25), Schedule 22, paragraph 29(34).  
(2) S.I.1989/2393.  
(3) 1972 c. 68.  
(4) O.J. No. L 281, 10.11.1979, p.47.

### **Compliance with relevant requirements**

3.—(1) Subject to paragraphs (2) and (3) below, any waters classified under these Regulations shall be treated in relation to any period of twelve months as complying with the requirements specified in the Schedule to these Regulations for any parameter if in that period in relation to those waters—

- (a) in the case of the parameter for organohalogenated substances or metals, 100 per cent of the samples taken for that parameter in accordance with regulation 4 below comply with the requirements;
- (b) in the case of the parameter for salinity or dissolved oxygen, 95 per cent of the samples taken for that parameter in accordance with regulation 4 below comply with the requirements;
- (c) in the case of any other parameter, 75 per cent of the samples taken for that parameter in accordance with regulation 4 below comply with the requirements.

(2) Where in accordance with regulation 4(5) below the frequency of sampling is reduced in relation to any waters classified under these Regulations, 100 per cent of samples taken for each parameter in accordance with regulation 4 below in relation to those waters must comply with the requirements specified in the Schedule.

(3) Non-compliant samples shall be ignored for the purposes of paragraphs (1) and (2) above if they are the result of a disaster.

### **Sampling and analysis**

4.—(1) The Scottish Environment Protection Agency shall ensure that waters classified under these Regulations are sampled and samples are analysed in accordance with the following provisions of this regulation.

(2) Samples in relation to any waters classified under these Regulations shall always be taken at the same sampling point.

(3) The Scottish Environment Protection Agency shall fix the exact position of the sampling point, and the depth at which samples are to be taken, having regard in particular to—

- (a) the distance of the sampling point to the nearest point where pollutants are discharged; and
- (b) local environmental conditions.

(4) Subject to paragraphs (5) and (6) below, sampling for any parameter shall be carried out at least at the minimum frequency specified in the Schedule in relation to that parameter.

(5) Where the Scottish Environment Protection Agency's records show that the quality of any waters classified under these Regulations is appreciably higher for any parameter than the minimum required by these Regulations, the Agency may reduce the sampling frequency for that parameter or, if there is no pollution and no risk of deterioration of its quality, it may dispense with sampling for that parameter altogether.

(6) Where sampling shows that the requirements of regulation 3 above are not being met, the Scottish Environment Protection Agency shall establish whether this is the result of chance, a natural phenomenon or pollution and shall adopt appropriate measures.

(7) Samples for any parameter shall be analysed using the reference methods of analysis specified in the Schedule to the Regulations in relation to that parameter or methods which are at least as reliable as the reference methods.

## **Derogations**

5. The Scottish Environment Protection Agency may derogate from the requirements of these Regulations in the event of exceptional weather or geographical conditions.

## **Modification of section 30C of the Control of Pollution Act 1974**

6. Section 30C of the Control of Pollution Act 1974(5) (water quality objectives) shall have effect—

- (a) as if it imposed a duty on the Secretary of State to exercise the powers conferred on him under that section to classify under these Regulations such waters as are appropriate for the purpose of giving effect to Directive 79/923/EEC in relation to waters in or adjacent to Scotland; and
- (b) in relation to the performance of that duty, as if subsections (4) and (5) of that section were omitted.

## **Information required in connection with implementation of the Directive**

7.—(1) The Scottish Environment Protection Agency may serve on any person a notice requiring that person to furnish the Agency within a period or at times specified in the notice and in a form so specified, with such information as is reasonably required by the Agency for the purposes of giving effect to Directive 79/923/EEC.

(2) A person who fails without reasonable excuse to comply with the requirements of a notice served on him under this regulation shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or both.

St Andrew's House,  
Edinburgh  
9th October 1997

*Sewel*  
Parliamentary Under Secretary of State, Scottish  
Office

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(5) 1974 c. 40; section 30C was inserted by section 69 and paragraph 14 of Schedule 23 to the Water Act 1989 (c. 15) and was amended by section 120 and paragraph 29(2) and (4) of Schedule 22 to the Environment Act 1995 (c. 25).

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

## SCHEDULE

Regulations 2, 3 and 4

## CRITERIA FOR CLASSIFICATION OF WATERS AS SHELLFISH WATERS

<i>No. in Annex to 79/923/EEC</i>	<i>Parameter</i>	<i>Units</i>	<i>Requirements to be satisfied</i>	<i>Reference methods of analysis</i>	<i>Minimum sampling and measuring frequency</i>
1	pH	pH unit	$\geq 7$ and $\leq 9$	Electrometry.  Measured in situ at the time of sampling.	Quarterly
3	Colouration (after filtration)	mg Pt/l	A discharge affecting shellfish waters must not cause the colour of the waters after filtration to deviate by more than 10mg Pt/l from the colour of waters not so affected.	Filter through a 0.45 $\mu\text{m}$ membrane  Photometric method, using the platinum/cobalt scale.	Quarterly
4	Suspended solids	mg/l	A discharge affecting shellfish waters must not cause the suspended solid content of the water to exceed by more than 30% the content of waters not so affected.	Filtration through a 0.45 $\mu\text{m}$ membrane, drying at 105°C and weighing.  Centrifuging (for at least five minutes, with mean acceleration 2,800 to 3,200g), drying at 105°C and weighing.	Quarterly
5	Salinity	‰	$\leq 40\text{‰}$  A discharge affecting shellfish	Conductmetry.	Monthly

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6	Dissolved oxygen	Saturation %	<p>waters must not cause their salinity to exceed by more than 10% the salinity of waters not so affected.</p> <p>≥ 70% (average value)</p> <p>If an individual measurement indicates a value lower than 70% measurements shall be repeated.</p> <p>An individual measurement may not indicate a value of less than 60% unless there are no harmful consequences for the development of shellfish colonies.</p>	<p>Winkler's method.</p> <p>Electrochemical method.</p>	<p>Monthly, with a minimum of one sample of low oxygen conditions on the day of the sampling. However, where major daily variations are suspected, a minimum of two samples in one day shall be taken.</p>
7	Petroleum hydrocarbons		<p>Hydrocarbons must not be present in the shellfish waters in such quantities as to:</p> <ul style="list-style-type: none"> <li>— produce a visible film on the surface</li> </ul>	<p>Visual examination.</p>	<p>Quarterly</p>

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No. in Annex to 79/923/EEC	Parameter	Units	Requirements to be satisfied	Reference methods of analysis	Minimum sampling and measuring frequency
			of the water and/or a deposit on the shellfish, — have harmful effects on the shellfish.		
8		Organohalogenated substances	The concentration of each substance in the shellfish waters or in shellfish flesh must not reach or exceed a level which has harmful effects on the shellfish and their larvae.	Gas chromatography after extraction with suitable solvents and purification.	Half-yearly
9	Metals	mg/l	The concentration of each substance in the shellfish waters or in the shellfish flesh must not reach or exceed a level which has harmful effects on the shellfish and their larvae.	Spectrometry of atomic absorption preceded, where appropriate, by concentration and/or extraction.	Half-yearly
	Silver Ag				
	Arsenic As				
	Cadmium Cd				
	Chromium Cr				
	Copper Cu				
	Mercury Hg				
	Nickel Ni				
	Lead Pb		The synergic effects of these metals must be taken into consideration.		
	Zinc Zn				

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<i>No. in Annex to 79/923/EEC</i>	<i>Parameter</i>	<i>Units</i>	<i>Requirements to be satisfied</i>	<i>Reference methods of analysis</i>	<i>Minimum sampling and measuring frequency</i>
11	Substances affecting the taste of the shellfish	Concentration should be lower than that which is liable to impair the taste of the shellfish.	Examination of the shellfish by tasting where the presence of one of these substances is presumed.		

### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations prescribe a system for classifying the quality of controlled waters which are coastal or brackish waters which need protection or improvement in order to support shellfish life and growth.

The classification SFW (“shellfish waters”) reflects the mandatory values assigned by Directive [79/923/EEC](#) (on the quality required of shellfish waters) to the parameters listed in the Schedule to these Regulations.

The Regulations also incorporate the reference methods of measurement, and the minimum frequency required for sampling and analysis, laid down in that Directive for those parameters.

The Regulations, together with the Surface Waters (Shellfish) (Scotland) Directions 1997, transpose Directive [79/923/EEC](#) in relation to Scotland. Copies of the Surface Waters (Shellfish) (Scotland) Directions 1997 may be obtained from the Environment Protection Unit, Scottish Office Agriculture, Environment and Fisheries Department, Victoria Quay, Edinburgh, EH6 6QQ.