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STATUTORY RULES OF NORTHERN IRELAND

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**2008 No. 231**

**The Quality of Bathing Water  
Regulations (Northern Ireland) 2008**

**PART 1**

**PRELIMINARY**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Quality of Bathing Water Regulations (Northern Ireland) 2008 and come into operation in accordance with paragraphs (2) to (6).

(2) Regulations 1- 6, regulation 19, paragraph 2 (1) (a) of Schedule 3 and regulation 8 insofar as it relates to that paragraph, come into operation on 30<sup>th</sup> June 2008.

(3) Regulation 7 comes into operation on 24<sup>th</sup> March 2011.

(4) Subject to paragraph (6), regulations 8 to 10, 11(1) (a) and (5), 13, 15 to 18 and 20 come into operation on 24<sup>th</sup> March 2012.

(5) The remainder of regulation 11 and regulations 12 and 14 come into operation on 24<sup>th</sup> March 2015.

(6) Sub-paragraph (a) of paragraph (1) of regulation 9, regulation 10 insofar as it relates to that sub-paragraph and regulation 21 come into operation on 30<sup>th</sup> September 2015.

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 (1) applies to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(2) In these Regulations—

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

“bathing season” means the period determined by the Department under regulation 4;

“bathing water” means a surface water specified in Schedule 1;

“Bathing Water Directive” means Directive [2006/7/EC\(2\)](#) of the European Parliament and of the Council concerning the management of bathing water quality and repealing Directive [76/160/EEC\(3\)](#);

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(1) [1954 c.33 \(N.I.\)](#)

(2) [OJNo. L64, 4.3.2006, p.37](#)

(3) [OJ No. L31,5.2.76, p.1](#)

“bathing water operator” means any person who controls the land immediately adjacent to a bathing water which is normally used to access the bathing water from the landward side and where the bathing water is tidal, the person who controls such land above the high water mark;

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

“bathing water quality assessment” means the assessment carried out by the Department under regulation 11;

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

“Department” means the Department of the Environment;

“Departmental management measures” means measures taken by the Department—

- (a) under regulation 5 to reduce the risk of pollution; or
- (b) under regulations 7 to 12;

“management measures” means Departmental management measures or operator management measures;

“operator management measures” means measures taken by a bathing water operator—

- (a) to give information to the public under regulation 9; or
- (b) to prevent bathers’ exposure to pollution by means of public information under regulation 9;

“permanent advice against bathing” means advice issued, in relation to at least one whole bathing season, under regulation 12(2);

“relevant procedures for short-term pollution” means the following procedures for identifying the causes of, predicting and dealing with short-term pollution—

- (a) management measures;
- (b) surveillance and early warning systems with a view to preventing bathers’ exposure to the short-term pollution by means of public information under regulations 9 and 10;
- (c) measures in relation to a bathing water taken by the Department under regulation 5 to prevent, reduce or eliminate the causes of 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 Department—

- (a) has identified its 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;

“surface water”, “groundwater”, “inland water”, “coastal water” and “transitional waters” have the same meaning as in the Water Framework Regulations;

“vicinity of the bathing water” means a position near to the bathing water, at a place likely to be noticed by persons as they make use of or enter onto the bathing water and, where the bathing water is tidal, higher than the High Spring Tide mark; and

“Water Framework Regulations” means the Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2003(4).

(3) In the following regulations, namely—

- (a) regulation 5(4)

- (b) regulation 10(2)(b),
- (c) regulation 12(2),
- (d) regulation 13(1) and (2),
- (e) regulation 14(a),
- (f) regulation 16; and
- (g) paragraph 10(2) of Part 4 of Schedule 3,

references to a bathing water operator do not include the Department in its capacity as such.

(4) Expressions used in these Regulations and not otherwise defined shall have the same meaning in these Regulations as they have in the Bathing Water Directive.

## PART 2 GENERAL

### **Identification of bathing waters**

3. The surface waters specified in Schedule 1 are bathing waters for the purposes of these Regulations.

### **Length of bathing season**

4. For the purposes of these Regulations, the bathing season begins on the 1<sup>st</sup> June and ends at the end of the day on 15<sup>th</sup> September in each year.

### **General duties**

5.—(1) The Department shall in the exercise of its relevant functions—

- (a) ensure that by the end of the bathing season in 2015, all bathing waters are classified under regulation 12 as at least “sufficient”;
- (b) take such realistic and proportionate measures as it considers appropriate in order to increase the number of bathing waters classified under regulation 12 as “good” or “excellent”; and
- (c) otherwise ensure compliance with the requirements of the Bathing Water Directive.

(2) In this regulation “relevant functions” means functions under these Regulations and so far as relevant the enactments specified in Schedule 2 to the Water Framework Regulations.

(3) In the Water Framework Regulations, in Schedule 2 (relevant functions), in Part 2, after paragraph 26 insert—

*“27. The Quality of Bathing Water Regulations (Northern Ireland)2008.”.*

(4) The Department shall promptly provide a bathing water operator with such information as the Department considers the operator requires for the purpose of the operator’s functions under these Regulations.

### **Public participation**

6.—(1) The Department shall—

- (a) encourage public participation in the exercise of its functions under these Regulations; and
- (b) ensure that the public has an opportunity—

- (i) to find out how to participate; and
- (ii) to submit comments or complaints.

(2) The Department shall take due account of any information it has obtained from the public when exercising its functions under these Regulations.

### **Bathing water profiles**

7.—(1) The Department shall establish and keep under review a bathing water profile for every bathing water in accordance with Schedule 2.

(2) The Department may combine the bathing water profiles of contiguous bathing waters.

(3) When complying with paragraph (1), the Department shall take into account the data which it has obtained or analysed under—

- (a) The Quality of Bathing Water Regulations (Northern Ireland) 1993(5); and
- (b) The Water Framework Regulations.

## **PART 3**

### **MONITORING OF BATHING WATERS AND PUBLIC INFORMATION**

#### **Monitoring**

8.—(1) The Department shall monitor and carry out investigations at bathing waters in accordance with this regulation.

(2) Monitoring for—

- (a) Intestinal enterococci and *Escherichia coli* shall be in accordance with Part 1 of Schedule 3;
- (b) cyanobacteria shall be in accordance with Part 2 of Schedule 3;
- (c) other pollution, which takes the form of tarry residues, glass, plastic, rubber or any other waste, shall be carried out in accordance with Part 4 of Schedule 3.

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

(4) The bathing water operator shall also monitor in accordance with Part 4 of Schedule 3.

#### **Public information: duties of bathing water operator**

9.—(1) Every bathing water operator shall ensure that the following information about its 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 12;
- (b) whether any advice against bathing has been introduced there;
- (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) a statement to that effect;

- (ii) 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;
  - (iii) a warning whenever short-term pollution is predicted or present;
  - (e) information on the nature and expected duration of abnormal situations there; and
  - (f) an indication of the sources of more complete information published in accordance with regulation 10.
- (2) Paragraph (3)(a) and (b) of regulation 10 shall apply to information provided under this regulation as it applies to information provided under that regulation.

### **Public information: duties of the Department**

**10.**—(1) The Department shall publish on its website the information specified in regulation 9(1) together with the following additional information, namely—

- (a) a list of all bathing waters;
  - (b) before the start of every bathing season, the classification in accordance with regulation 12 of every bathing water for the preceding three years;
  - (c) the bathing water profile of every bathing water;
  - (d) as soon as possible after completion of the analyses under Schedule 3, the results of the monitoring carried out in accordance with regulation 8 since the beginning of the current bathing season;
  - (e) where its bathing water profile indicates that the bathing water is likely to be affected by incidents of short-term pollution—
    - (i) the conditions likely to lead to short-term pollution there;
    - (ii) the likelihood of short-term pollution there and its likely duration;
    - (iii) the causes of short-term pollution; and
    - (iv) the relevant procedures for short-term pollution; and
  - (f) where a bathing water is classified as “poor” under regulation 12—
    - (i) the causes of pollution there; and
    - (ii) the management measures being taken there under regulation 14.
- (2) The Department shall—
- (a) prepare a general description of every bathing water for use under regulation 9(1)(c); and
  - (b) make the information available to all bathing water operators.
- (3) Information under this regulation shall—
- (a) wherever possible, be provided using a geographic information system;
  - (b) be presented in a clear and coherent manner; and
  - (c) be in such languages, in addition to English, as are appropriate having regard to the location of the bathing water and the ease of public understanding.

## PART 4

### BATHING WATER ASSESSMENT AND CLASSIFICATION

#### Assessment

- 11.—(1) At the end of every bathing season, for every bathing water, the Department shall—
- (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, where the Department so decides in accordance with paragraph (3); or
  - (c) the number of immediately preceding bathing seasons, being less than three, that the Department so decides in accordance with paragraph (4).
- (3) The Department may make a decision under paragraph (2)(b) where—
- (a) it is at least five years since the last change in the relevant assessment period; and
  - (b) the set of bathing water quality data is based on at least 16 samples.
- (4) The Department may make a decision under paragraph 2(c) where—
- (a) it considers that any factors identified in the bathing water profile as likely to affect the classification of the bathing water under regulation 12 have changed, and the set of bathing water quality data used is based only on samples taken since those factors have changed; and
  - (b) the set of bathing water quality data is based on at least 16 samples.
- (5) The Department may—
- (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 light of those assessments where those bathing waters—
    - (i) are contiguous;
    - (ii) have received similar assessments for the preceding four years; and
    - (iii) have bathing water profiles which identify common pollution risk factors or the absence thereof.

#### Classification

12.—(1) At the end of every bathing season, on the basis of the assessment made under regulation 11 the Department shall classify every bathing water as “poor”, “sufficient”, “good” or “excellent” in accordance with Schedule 4.

(2) The Department shall issue permanent advice against bathing at a bathing water (which advice shall also be directly communicated to the bathing water operator) if—

- (a) the bathing water is classified as “poor” for five consecutive years; or
- (b) after consultation with such other persons as it thinks fit it considers that the achievement of a “sufficient” quality classification at that bathing water would be infeasible or disproportionately expensive.

## PART 5

### MANAGEMENT OF BATHING WATERS

#### **Management measures at bathing waters subject to pollution incidents**

- 13.**—(1) This regulation applies where the Department or a bathing water operator is aware of—
- (a) a cyanobacterial proliferation which it considers may pose a risk to bathers' health;
  - (b) a proliferation of macro-algae or marine phytoplankton which it considers is unacceptable or may pose a risk to bathers' health;
  - (c) the presence of waste, including tarry residues, glass, plastic, or rubber; or
  - (d) any other incident, other than an incident of short-term pollution to which regulation 15 applies, that it considers may pose a risk to bathing water quality and bathers' health.
- (2) The Department shall, when it is so aware, promptly —
- (a) consult the bathing water operator; and
  - (b) take, or cause to be taken, such Departmental management measures there as the Department considers adequate to protect bathers' health.
- (3) Where a bathing water operator is so aware it shall promptly —
- (a) consult the Department;
  - (b) take such operator management measures there as it considers adequate to protect bathers' health; and
  - (c) where necessary, remove the waste.

#### **Additional management measures at “poor” bathing waters**

- 14.** Where the Department classifies a bathing water as “poor” under regulation 12 —
- (a) the Department shall, during the bathing season following this classification—
    - (i) take, or cause to be taken, such Departmental management measures at the bathing water as it considers adequate with a view to preventing bathers' exposure to pollution;
    - (ii) notify the bathing water operator; and
    - (iii) identify the reasons why the bathing water failed to achieve a classification of “sufficient”;
  - (b) the bathing water operator shall—
    - (i) take such operator management measures there as it considers adequate with a view to preventing bathers' exposure to pollution; and
    - (ii) introduce advice against bathing there and make it available in accordance with regulation 9.

#### **Additional management measures at bathing waters likely to be subject to incidents of short-term pollution**

- 15.** Where the bathing water profile indicates that there is short-term pollution at a bathing water—
- (a) the Department shall operate, or cause to be operated, the relevant procedures for short-term pollution for which it is responsible; and

- (b) the bathing water operator shall take the operator management measures which form part of the relevant procedures for short-term pollution there.

## PART 6

### GENERAL PROVISIONS

#### **Notice requiring bathing water operator to comply with the Regulations**

**16.**—(1) If the Department becomes aware that a bathing water operator has failed in its duties under these Regulations, the Department may —

- (a) by notice given to the bathing water operator specify—
  - (i) the measures which shall be taken by it to comply with these Regulations; and
  - (ii) the time within which those measures shall be taken.

(2) Before serving a notice under paragraph (1) on a bathing water operator, the Department shall reasonably endeavour to consult that operator concerning the measures which are to be specified in the notice.

(3) A notice under paragraph (1) shall not be regarded as invalid or invalidly served by reason only of a failure to comply with paragraph (2).

(4) A bathing water operator upon whom a notice under paragraph (1) is served, may, within the period of 21 days beginning with the day on which the notice is served, appeal against the notice to the Water Appeals Commission.

(5) Where—

- (a) a notice under paragraph (1) is varied or quashed on appeal; and
  - (b) the bathing water operator has complied with the notice,
- the Department shall pay to the bathing water operator an amount equal to the loss suffered, or expenditure incurred, by that operator in complying with the notice.

(6) Any dispute under regulation (5) as to the loss suffered or expenditure incurred shall be determined by the Lands Tribunal.

#### **Consequences of not complying with a notice under regulation 16**

**17.** If a bathing water operator upon whom a notice is served under regulation 16 fails to comply with any of the requirements of the notice, the Department may—

- (a) do what the bathing water operator was required to do and may recover from the bathing water operator any costs or expenses reasonably incurred by the Department in doing it; or
- (b) take proceedings in the High Court requiring the bathing water operator to comply with the notice.

#### **Enforcement powers**

**18.** Article 72 of the Waste and Contaminated Land (Northern Ireland) Order 1997 (6) applies to the exercise by the Department of its functions under these Regulations as it applies to the exercise of its functions under the pollution control statutory provisions referred to in that Article.



### **Power to obtain information**

**19.**—(1) The Department may serve on any person a notice requiring that person to furnish it, within a period of time specified in the notice and in a form and manner so specified, with such information as is reasonably required by the Department for the purpose of carrying out any of its functions under these Regulations.

(2) A person who fails without reasonable excuse to comply with the requirements of a notice served on him under paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### **Co-operation on transboundary waters**

**20.**—(1) Where a river basin gives rise to transboundary impacts on bathing water quality, the Department shall notify the competent authorities in the Republic of Ireland of the relevant facts.

(2) The Department, in consultation with the competent authorities in the Republic of Ireland, shall organise the concertation necessary to identify the sources in question and the measures to be taken to protect the waters that are affected.

## **PART 7**

### **REVOCATION**

#### **Revocation**

**21.** The Quality of Bathing Water Regulations (Northern Ireland) 1993 are hereby revoked.

Sealed with the Official Seal of the Department of the Environment on 28<sup>th</sup> May 2008.



*Maggie Smith*  
A senior officer of the  
Department of the Environment