
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 170

The Bathing Waters (Scotland) Regulations 2008

PART 1

GENERAL PROVISIONS

Citation, commencement and extent

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

Interpretation

2. In these Regulations—

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

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

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

“bathing water directive” means Directive [2006/7/EC\(1\)](#) of the European Parliament and of the Council concerning the management of bathing water quality and repealing Directive [76/160/EEC\(2\)](#);

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

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

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

“controlled activity” has the same meaning as it has in section 20 of the Water Environment and Water Services (Scotland) Act 2003(4);

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

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

(3) [2003 asp 3](#).

(4) section 20 was amended by [S.S.I. 2005/348](#).

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

“European site” has the same meaning as it has in regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994⁽⁵⁾;

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

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

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

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

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

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

“public body” means any body that is also a “contracting authority” in terms of the Public Contracts (Scotland) Regulations 2006⁽⁶⁾;

“public sewerage system” has the same meaning as it has in Part 2 of the Water Services etc. (Scotland) Act 2005⁽⁷⁾;

“relevant health board”, in relation to a bathing water, means the health board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978⁽⁸⁾ with responsibility for the area where the water is situated;

“relevant local authority”, in relation to a bathing water, means the council constituted under section 2 of the Local Government etc. (Scotland) Act 1994⁽⁹⁾ with responsibility for the area where the water is situated;

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

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

“Scottish Water” means the body corporate established under section 20 of the Water Industry (Scotland) Act 2002⁽¹⁰⁾;

“SEPA” means the Scottish Environment Protection Agency;

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

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

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

(7) 2005 asp 3.

(8) 1978 c. 29; section 2 was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) Schedule 7, paragraph 1, the National Health Service and Community Care Act 1990 (c. 19), section 28, and Schedule 9, paragraph 19, the National Health Service Reform (Scotland) Act 2004 (asp 7), schedule 1, paragraph 1(2) and the Smoking Health and Community Care (Scotland) Act 2005 (asp 13), schedule 2, paragraph 2(2).

(9) 1994 c. 39.

(10) 2002 asp 3.

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

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

“SNH” means Scottish Natural Heritage;

“SSSI” means a site of special scientific interest as defined in section 3(6) of the Nature Conservation (Scotland) Act 2004(11);

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

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

Designation of bathing waters and determination of bathing season

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

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

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

(3) The Scottish Ministers must—

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

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

- (a) swimming pools;
- (b) spa pools; or
- (c) enclosed waters—
 - (i) subject to treatment such as disinfection;
 - (ii) used for therapeutic purposes; or
 - (iii) which are artificially created and are separated from surface water and groundwater.

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

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

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

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

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

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

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

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

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

General duties

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

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

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

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

(3) Notwithstanding—

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

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

Consultation

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

(2) The Scottish Ministers must—

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

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

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

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

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

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