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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 170**

**The Bathing Waters (Scotland) Regulations 2008**

**PART 6**

**MANAGEMENT OF BATHING WATERS**

**Management measures at bathing waters affected by macro-algae and marine phytoplankton proliferation**

**15.**—(1) Where an interested party is of the opinion that a proliferation of macro-algae or marine phytoplankton has occurred in relation to a bathing water which poses a health risk to bathers or is unacceptable, that party must notify the other interested parties and, in the case of a health risk, the relevant health board.

(2) The interested parties must endeavour to determine jointly whether the proliferation of macro-algae or marine phytoplankton is a health risk or is unacceptable and, in the case of possible health risk, must do this under reference to the views of the relevant health board.

(3) Where the interested parties cannot agree for the purposes of paragraph (2), the determination of the relevant local authority is final.

(4) In determining whether the proliferation poses a health risk, the interested parties must have regard mainly to the risk to bathers' health due to the threat of disease but may, where they perceive it to be significant, have regard to the risk of direct physical injury to bathers.

(5) In determining whether the proliferation is unacceptable, the interested parties must have regard to—

- (a) whether the extent or volume of the proliferation is unusual;
- (b) whether the proliferation is unsightly;
- (c) any effluence or effluvia arising from the proliferation;
- (d) the impact upon the ecosystem of that bathing water which would result from the removal of the proliferation;
- (e) the amount of waste or litter which is contained in the proliferation; and
- (f) where the bathing water or any part of it forms part of a European site or of land which is a SSSI, the views of SNH upon the criteria set out in sub-paragraphs (a) to (e).

(6) Upon a determination under paragraph (2) that a proliferation is a health risk or unacceptable, the relevant local authority must—

- (a) promptly update any sign erected by it under regulation 8 and erect further signs (and thereafter maintain them) for the duration of the proliferation in such areas of the bathing water as are necessary to advise bathers of the presence of the proliferation, and in the case of a health risk, against bathing; and
- (b) thereafter consult with the other interested parties, the person with proprietorial interest in the bathing water and where appropriate SNH, as to whether to take action and what action to take to remove or reduce such a proliferation, having regard to:—

- (i) the likely duration of the proliferation;
  - (ii) the extent of the proliferation and the likelihood of it increasing; and
  - (iii) in the case of a health risk, the present and continuing efficacy of the signs erected under sub-paragraph (a) in deterring bathing.
- (7) The relevant local authority may—
- (a) enter onto land as necessary in the discharge of its duties under paragraph (6)(a);
  - (b) after consulting under paragraph (6)(b) and having regard to the views expressed, take such action (including the removal of materials) to remove or reduce the proliferation as is reasonably necessary to remedy or mitigate the risk to bathers' health;
  - (c) enter onto land (upon the provision of 7 days notice in writing to the landowner) as necessary in the exercise of its functions under sub-paragraph (b).
- (8) Where a determination under paragraph (2) or (3) is to the effect that a proliferation is a health risk, there is no need for it to be determined whether the proliferation is also unacceptable.