



## **ENVIRONMENTAL QUALITY DIRECTORATE**

**Better bathing waters for all**

**Implementing the revised Bathing Water Directive in  
Scotland: Consultation on the draft Bathing Water  
(Scotland) Regulations 2008**

**November 2007**



## Better bathing waters for all

### Implementing the revised Bathing Water Directive in Scotland: Consultation on the draft Bathing Water (Scotland) Regulations 2008

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# 1. Introduction

## 1.1 What is this consultation about?

1.1.1 Clean beaches and bathing waters are a very important asset to Scotland. Providing a valuable source of recreation to many different users, even during wet summers like this year's, they help promote a healthy lifestyle, while also contributing to the Scottish economy through their tourism potential. It is therefore important that we do our best to protect them. With the revised Bathing Water Directive (2006/7/EC)<sup>1</sup> introducing higher quality standards, we now have an opportunity to enhance our bathing waters further.

1.1.2 In March 2006, we announced in our strategy, "Better bathing waters: meeting the challenges of the revised Bathing Water Directive in Scotland"<sup>2</sup>, our intention to consult on draft Regulations through which we propose to transpose the revised Bathing Water Directive into Scots law. This document sets out how we believe the Regulations best meet the requirements of the Directive, explaining Regulation by Regulation our proposals. A draft of the Regulations is contained at Annex A. The Regulations' provisions come into force from 2008 onwards.

1.1.3 Some duties of the Directive are already covered under existing legislation, and we do not propose to duplicate these provisions in the Regulations. These provisions are identified in the consultation paper.

1.1.4 We are also using the consultation as a platform to actively seek comments on our proposals for meeting some of the Directive's requirements that will not be met by legislation alone. This includes issues which we touched upon in the strategy and which we will need to consider in the run-up to the complete implementation of the Directive, which must be accomplished by 2015.

1.1.5 We recognise that there will be benefits and costs associated with our proposals for transposing the Directive. These are explored in more detail in the Partial Regulatory Impact Assessment attached at Annex B.

1.1.6 We welcome your views both on the draft Regulations and on any other aspects of the consultation, and would encourage you to make your opinions known.

### **Timeframe – summary overview:**

- Consultation – *November 2007-February 2008*
- Regulations laid before the Scottish Parliament – *early March 2008*
- Regulations are made – *24 March 2008*
- Regulations in respect of list of bathing waters and length of season, identification of bathing water operators and public participation come into force – *24 March 2008*
- Regulations in respect of provision of public information, monitoring and management measures where pollution is present in force – *24 March 2011*
- Regulation in respect of compiling bathing water data in force – *24 March 2012*
- Regulations in respect of bathing water assessment and classification in force – *24 March 2015*

<sup>1</sup> Revised Bathing Water Directive (2006/7/EC)

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l\\_064/l\\_06420060304en00370051.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_064/l_06420060304en00370051.pdf)

<sup>2</sup> Scottish Executive (2006) *Better bathing waters: meeting the challenges of the revised Bathing Water Directive in Scotland* Paper 2006/6 [www.scotland.gov.uk/bathingwaterstrategy](http://www.scotland.gov.uk/bathingwaterstrategy)

## 1.2 Responding to this consultation paper

We are inviting written responses to this consultation paper by **6 February 2008**. Prompt responses would be appreciated as the finalised draft Regulations must be laid before the Scottish Parliament by early March, for the Regulations to be made by 24 March, as required by the Directive.

**Please send your response to:**

[waterdivision@scotland.gsi.gov.uk](mailto:waterdivision@scotland.gsi.gov.uk)

or by post to:

Scottish Government Environmental Quality Directorate  
Bathing Water Policy  
Water, Air, Soil and Flooding Division: Water Pollution Control Team  
Area 1-H (North) (Mailpoint 10)  
Victoria Quay  
Leith  
Edinburgh  
EH6 6QQ

Or by fax to 0131 244 0259

If you have any queries please contact Iain Morrison on 0131 244 0396.

1.2.1 We would be grateful if you could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

1.2.2 This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations> or through [www.scotland.gov.uk/bathingwaters](http://www.scotland.gov.uk/bathingwaters). You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

1.2.3 The Scottish Government now has an email alert system for consultations (**SEconsult**: <http://www.scotland.gov.uk/consultations/seconsult.aspx>). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult complements, but in no way replaces Scottish Government distribution lists, and is designed to allow stakeholders to keep up to date with all Government consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

### Handling your response

1.2.4 **IMPORTANT!** We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. In order for us to know, you need to complete and return the **Respondent Information Form** enclosed in this consultation paper as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it

accordingly. If we do not receive a completed Respondent Information Form, then we must issue a further copy for your completion along with our acknowledgement letter. If this second copy is not completed, we are under obligation to treat your response as confidential. Confidential responses will be published without the respondent's name or contact details made public.

1.2.5 All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### **Next steps in the process**

1.2.6 Where respondents have given permission for their response to be made public (see the attached Respondent Information Form), these will be made available to the public in the Scottish Government Library by 6 March 2008. We will check all responses where agreement to publish has been given for any potentially defamatory material before logging them in the library or placing them on the website. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

### **What happens next?**

1.2.7 Following the closing date, all responses will be analysed and considered along with any other available evidence to help us finalise the draft Regulations. We aim to issue a report on this consultation process around the time the Regulations are made.

### **Comments and complaints**

1.2.8 If you have any comments about how this consultation exercise has been conducted, please send them to Iain Morrison at the contact details given on page 2.

### 1.3 Summary of consultation questions

Q1 - Do you agree with how we propose to identify the bathing water operator? If not, who should be responsible instead? (Regulation 2)

Q2 – Your views are welcome on how we propose to establish the initial list of bathing waters under the revised Directive. (Regulation 3)

Q3 - Should the Panel be retained to assist Ministers in compiling the annual list after 2008? Could SEPA undertake this role instead, through its work on the WFD? Have you any views on how we ensure beach operators and local authorities have an appropriate say in these matters? (Regulation 3)

Q4 - Do you agree that there should be scope to set longer or shorter bathing seasons, dependent on where in Scotland bathing waters are located? What lengths should they be? Is the current bathing season (1 June – 15 September) suitable for most sites in Scotland? If you were to change it, how and why would you do it? (Regulation 3)

Q5 - With the Bathing Water Review Panel we have instigated a process for identifying bathing waters that encourages public participation, particularly through the use of the internet and engagement with local community and interest groups. Do you have any views on how we can further public involvement in this area? (Regulation 5)

Q6 - Do you agree that SEPA is best placed to establish the bathing water profiles? Is there any other information that you would like to see included in the profile, in addition to that required by the Directive? (Regulation 6)

Q7 - Do you agree that SEPA should be allowed to set the maximum number of samples that it intends to take at each bathing water, as it does at present? (Regulation 7)

Q8 - Do you have views on SEPA's use of the Directive's provision for flexibility in their sampling? Should there be any restrictions on its usage? (Regulation 7)

Q9 – SEPA's predictive abilities have been suitably tried and tested over the past few bathing seasons. Therefore we propose that they be allowed to discount samples where they predict or are aware of short-term pollution and appropriate warnings have been given. Do you have any views on this approach? (Regulation 7)

Q10 - We propose that to fulfil the requirement to provide public information, bathing water operators will be required to publicise this information through the use of signs. Do you agree that beach operators should be responsible for installing signage? (Regulation 8)

Q11 - What languages do you think would be appropriate for inclusion on SEPA's website? Should this relate to official EU languages, native languages of Scotland (Gaelic, Scots) or those used by ethnic minorities? (Regulation 8)

Q12 - What new technology would you suggest SEPA should adopt to provide bathing water information? (Regulation 8)

Q13 – Do you agree that this is an appropriate approach to improving *poor* bathing waters? If not, what would you suggest? (Regulation 11)

Q14 – Do you agree that local authorities and SEPA should determine whether an event is abnormal or exceptional? If not, who would be better placed to undertake this role? (Regulation 13)

Q15 – We believe that local authorities would be best placed to undertake the relevant roles to protect public health during abnormal events/exceptional circumstances. Do you agree? (Regulation 13)

Q16 – We believe local authorities would be best placed to undertake the relevant roles to protect public health during cyanobacteria proliferations. Do you agree? (Regulation 14)

Q17 – We believe local authorities would be best placed to undertake the relevant roles to protect public health during macro-algae and marine phytoplankton proliferations. Do you agree? (Regulation 15)

Q18 – We propose that the bathing water operator be responsible for organising remedial or restorative measures at the bathing water in terms of waste. Do you agree? (Regulation 16)

Q19 – Do you agree with this proposal, or should the party that discovers the health risk ensure that the other parties are kept informed? (Regulation 18)

Q20 - Do you agree with our proposals for notifying those with an interest of intended management measures? Should a single notice also apply in terms of macro-algae as well as for waste? (Regulation 19)

## 2. Background

Before introducing our proposals for implementing the revised Directive we consider it useful to explain what lies behind the aim of the Directive, and therefore the Regulations.

### 2.1 What is a bathing water?

2.1.1 Bathing waters referred to in this consultation paper are the areas of water identified by Scottish Ministers as being used by large numbers of people. In Scotland, a large number of people has been agreed as being more than 150 during a single day. There are currently 61 bathing waters in Scotland; 59 of these are in coastal locations, the remaining two situated at Loch Ness and Loch Lomond.<sup>3</sup> For coastal waters we have normally defined these as the area of foreshore plus a 100m seaward buffer. For inland lochs, we have classified these as an area extending 100m from the water's edge.

### 2.2 Why do they need to be protected?

2.2.1 Whether paddling or swimming, bathing water users – particularly children and the elderly - can potentially be at risk of becoming ill if the water quality is not of sufficiently good quality.

2.2.2 Bathing in waters contaminated by faecal pollution can lead to enteric illness, such as gastroenteritis. A report from the World Health Organisation also showed that there could also be a risk to bathers of the more severe acute febrile respiratory illness (AFRI), a respiratory infection accompanied by fever.<sup>4</sup>

2.2.3 Cyanobacteria (blue-green algae) and other algae can also pose health problems to bathers, particularly when these form toxic blooms or mats along the shoreline. Marine cyanobacteria can cause dermatitis, an itching or burning experience on the skin. More seriously, it has also been found to cause death to animals, and while there has been no evidence of human fatalities so far, WHO have stated that small children in particular may be at serious risk from accidental ingestion of the toxic algae.<sup>5</sup> There is also a potential threat to bathers from inhalation of fragments of marine algae or phytoplankton in sea spray, leading to severe breathing irritation. Freshwater cyanobacteria can also cause dermatological reactions, but again, more seriously, their ingestion or aspiration can cause severe illness, including abdominal pain, nausea, vomiting, fatigue, blistering of the mouth and skin and eye irritations. Surveys in different parts of the world have found that between about 45% and 90% of blooms of cyanobacteria produce toxins that could be harmful to human health.<sup>6</sup>

2.2.4 Waste, including litter, which collects in bathing waters is also a problem, whether washed up from the sea, from rivers or discarded by beach goers themselves. As well as being unsightly, waste can also pose risks to health and safety, for example cuts from broken glass bottles to skin irritations from toxic waste containers.

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<sup>3</sup> Details of the designated Scottish bathing waters can be found on the Scottish Government's website – [www.scotland.gov.uk/bathingwaters](http://www.scotland.gov.uk/bathingwaters)

<sup>4</sup> World Health Organization (2003) *Guidelines for safe recreational water environments: Volume 1 Coastal and fresh waters* World Health Organization, Geneva

<sup>5</sup> *ibid*

<sup>6</sup> Scottish Executive Health Department (2007) *Blue-Green Algae (Cyanobacteria) in Inland and Inshore Waters: Assessment and Minimisation of Risks to Public Health* <http://www.scotland.gov.uk/Resource/Doc/175959/0049536.pdf>

2.2.5 Only bathing waters designated by Ministers will be legally afforded this protection.

## 2.3 What causes pollution?

2.3.1 *Faecal pollution* of bathing waters can be naturally occurring, for example from large concentrations of seabirds, but in the majority of cases in Scotland poor standards are due to contamination from anthropogenic sources.

2.3.2 This used to be mainly due to direct sewage discharges to bathing waters, but after significant investment in sewerage infrastructure by Scottish Water the risks here have been greatly reduced, although not altogether removed. Some problems still remain after periods of heavy rain, when wastewater treatment systems in urban areas cannot cope with the excess rainwater entering the sewerage system and instead discharge this diluted mix of sewage to the water environment.

2.3.3 As the problems from direct sewage discharges have largely been tackled, the impact of diffuse pollution on bathing waters has become more noticeable. Such pollution, from many different sources, can be both urban – for example, birds roosting on bridges - and rural – livestock slurry – in nature. It is however, diffuse rural pollution that is potentially the greatest remaining risk to bathers. Animal waste can be washed off fields into burns leading to pollution at the bathing waters further downstream the catchments. Where a number of watercourses feed into the same bathing water, this can be a considerable problem.

2.3.4 The impact that heavy rain has on our bathing waters failing was very noticeable this past summer. A significant number of poor results were recorded in 2007 compared to last year's excellent record of 100% compliance. While more frequent heavy rain and flash flooding is forecast in future as a result of climate change, it is important to minimise the sources of potential pollution, to avoid the rain causing such problems in future.

2.3.5 *Cyanobacterial and other algae growths* can be naturally occurring, but where there is excess nutrient input into the water, specifically from human sources - sewage outfalls or fertilisers washed off agricultural land – the growth can be exacerbated.

2.3.6 *Other waste* can come from land, for example washed down rivers, from beach visitors, or from vessels at sea.

## 2.4 Current and revised Bathing Water Directive

### *Current Bathing Water Directive*

2.4.1 There has been a Bathing Water Directive in place since 1976. Directive 76/160/EEC<sup>7</sup> concerning the quality of bathing water first introduced requirements on Member States to protect the health of bathers at sites traditionally used for bathing, by requiring compliance with a number of microbiological and chemical parameters.

2.4.2 The Directive introduced two sets of standards – *mandatory*, for which all bathing waters must comply, and a higher *guideline* standard. Compliance with the Directive's mandatory standards is based on the counts of total coliforms and faecal coliforms. These microbiological organisms all live naturally in the guts of humans and other warm-blooded

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<sup>7</sup> Bathing Water Directive (76/160/EEC) <http://ec.europa.eu/water/water-bathing/directiv.html>

mammals and were therefore seen as appropriate indicators of faecal pollution. For a mandatory pass to be achieved, 95% of samples taken must comply with the Directive's mandatory standards. The Directive's guideline values are stricter than the mandatory standard, and if achieved, indicate excellent bathing water quality. The coveted Blue Flag awards<sup>8</sup> can only be attained by beaches whose water quality is of guideline quality. Compliance with the Directive's guideline values is based on the counts of total coliforms, faecal coliforms and faecal streptococci.

2.4.3 The Directive also established where and when sampling of bathing waters should be carried out. The Directive was transposed into Scots law through the Bathing Waters (Classification) (Scotland) Regulations 1991.<sup>9</sup> These Regulations established SEPA as being responsible for monitoring and assessing official bathing waters, and for assisting Ministers in achieving compliance.

2.4.4 Scottish compliance with the existing Directive has gradually improved over the years, evidenced in the 100% pass rate achieved last year. The poorer results for the 2007 season can generally be attributed to the much wetter weather witnessed this year, as it is during such periods that bathing waters are most prone to pollution. Even so, from the figures shown in the table below, it is evident that the quality of our bathing waters is improving overall. This has largely been as a result of progress by Scottish Water and its predecessors in the provision of sewerage infrastructure.

Year	Passes (guideline)	Passes (mandatory)	Fail (%)	Total
1993	3 (13%)	15 (65%)	5 (22%)	23
1994	6 (26%)	10 (43%)	7 (30%)	23
1995	5 (22%)	15 (65%)	3 (13%)	23
1996	5 (22%)	16 (70%)	2 (9%)	23
1997	5 (22%)	14 (21%)	4 (17%)	23
1998	3 (13%)	9 (39%)	11 (48%)	23
1999	26 (43%)	27 (45%)	7 (12%)	60
2000	24 (40%)	27 (45%)	9 (15%)	60
2001	24 (40%)	27 (45%)	9 (15%)	60
2002	24 (40%)	31 (52%)	5 (8%)	60
2003	38 (63%)	19 (32%)	3 (5%)	60
2004	32 (53%)	24 (40%)	4 (7%)	60
2005	33 (55%)	24 (40%)	3 (5%)	60
2006	34 (54%)	29 (46%)	0	63
2007	29 (48%)	25 (41%)	7 (11%)	61

Table 1: Compliance at Scottish designated bathing waters: 1993-2007

### ***Revised Bathing Water Directive***

2.4.5 However, as compliance with the existing Directive improved, alongside advances in science, moves were put into place to revise it. Proposals put forward by the European

<sup>8</sup> Foundation for Environmental Education Blue Flag Award <http://www.blueflag.org/>

<sup>9</sup> Bathing Waters (Classification) (Scotland) Regulations 1991 (1991/1609) [http://www.opsi.gov.uk/SI/si1991/Uksi\\_19911609\\_en\\_1.htm](http://www.opsi.gov.uk/SI/si1991/Uksi_19911609_en_1.htm)

Commission finally led, after more than five years of negotiations, to a revised Directive coming into force on 24 March 2006.

2.4.6 The end result presents many challenges for Scotland. Compared to the existing Directive, standards have been tightened, and there are new requirements for public participation in decision-making, including a requirement to actively disseminate water quality information to the public. It offers us significant opportunities to further improve the quality of our bathing waters, raising standards that have improved over the last decade.

2.4.7 Assessment is now based on two main microbiological parameters – *Intestinal enterococci* and *Escherichia coli*. Compliance standards are higher, although rather than two levels, as under the existing Directive (*mandatory* and *guideline*), there are now three – *sufficient*, *good* and *excellent*, as well as *poor*. The Directive requires that all designated sites meet at least sufficient quality, with an aim for good or excellent by the end of 2015. Suitable management measures to comply with the Directive are required to be introduced. There are also provisions in the Directive to discount failing samples during periods of short-term pollution, but only where appropriate warning to bathers is given, and other management measures are in place. The revised Directive allows for a flexible approach towards sampling dates, around a calendar fixed beforehand. Importantly the Directive introduces requirements for information – with standard imagery throughout the EU to assist understanding - through clear signage, internet and other means, on the quality of bathing waters, in order to inform the decision of the public on whether or not to bathe.

## **2.5 How the revised Bathing Water Directive fits into the Water Framework Directive**

2.5.1 The revised Bathing Water Directive was drafted to take account of the requirements of the EC Water Framework Directive<sup>10</sup> (WFD), which takes an overarching approach to the protection of the water environment. Designated bathing waters under the revised Directive are also protected areas under the Water Framework Directive, and as such the WFD sets objectives to achieve compliance with the standards and objectives of the revised Bathing Water Directive by 2015. The effect of this objective is to bring the objectives and standards required of the revised Bathing Water Directive under the umbrella of river basin management planning to ensure a more integrated approach. The plans being developed for the river basin districts in which our bathing waters lie will take full account of the revised Directive's requirements when they are published in 2009.

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<sup>10</sup> [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/l\\_327/l\\_32720001222en00010072.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/l_327/l_32720001222en00010072.pdf)

### **3. Policy proposals for implementing the Directive**

#### **3.1 Overview of our proposals for implementing the Directive**

3.1.1 The revised Bathing Water Directive requires us, as with the rest of the UK and other Member States, to make all the necessary legal arrangements to comply with the Directive by 24 March 2008. We intend to do most of this through the Regulations to which this consultation relates. In many cases, these will be a straightforward adoption of the Directive's requirements, although there are some issues regarding how we choose to implement the Directive that can be debated, and we would particularly welcome your thoughts on these issues.

3.1.2 Some aspects of the transposition of the Directive, for example, measures to meet compliance with the Directive's standards, can already or will soon be met through other legislative provisions. In implementing the Directive we will ensure that we create strong links with these other provisions, particularly the legislation that implements the pollution control measures under the Water Framework Directive, therefore affording the best possible protection through existing legislative means.

3.1.3 The following sections explain how we intend to meet the Directive's requirements – which parts we will transpose through Regulations and what this will mean in practice, and the parts that we propose to implement through other means, both through other legislation or through non-legislative measures.

3.1.4 It is important to note that the revised Directive only deals with health related water quality issues. It does not relate to other safety issues that may be associated with using bathing waters, for example, strong currents, rip tides or quick sands. As we are legally bound to implement the Directive, our proposals only relate to provisions required under the Directive. However, we would expect bathing water operators to consider such risks and inform the public accordingly, and certain safety issues may be taken into consideration during designation.

#### **3.2 The regulatory approach - commentary on draft Regulations**

3.2.1 This section is intended to be read alongside the text of the draft Bathing Water (Scotland) Regulations 2008, which are set out in Annex A.

3.2.2 Below you will find our commentary for each regulation, explaining what Article of the Directive the regulation is intended to meet (where applicable) and setting out how and why a particular approach has been taken and what it means.

**Your views are sought on what we are proposing in the draft Regulations.**

#### **Regulation 1 – Citation, commencement and extent**

3.2.3 Regulation 1 explains that the Regulations will be known as the Bathing Water (Scotland) Regulations 2008. It provides for Part 1 of the Regulations (Regulations 1-5) together with Regulation 25(1)(a), and part of Schedule 2 to come into force on 24 March 2008. Parts 2, 3, 5 and 6 (Regulations 6-8, 11-24) will come into force in 2011, Part 4

(regulations 9(1)(a) and 9(2)) in 2012, and the rest of the regulations in 2015. The Regulations coming into force from 2008 onwards meet the requirements of Article 18 of the Directive.

## **Regulation 2 – Interpretation**

3.2.4 Regulation 2 provides definitions of certain terms used in the Regulations, which underpin the provisions in the subsequent regulations. Most of these definitions are either those referred to under Article 2 of the Directive or those referred to under existing Scottish enactments. To take account of existing Scottish circumstances in terms of bathing water, a number of new definitions have been made. These include the following:

3.2.5 *Bathing water operator* – For coastal sites, ownership of the foreshore and seashore parts of a bathing water can be split between a number of different owners, many of whom have no vested interest in the designation. To take account of this, we are proposing that under the Regulations, the person in control of the land immediately adjacent to the bathing water upon which in SEPA's opinion, the main facilities, infrastructure (for example, public toilets, car parking) or measures to promote bathing are located, is designated the bathing water operator. Where such facilities do not exist, the operator would be the person in control of the land that the majority of bathers ordinarily access the bathing water (in many cases the beach). We believe SEPA is best suited to undertake the role of identifying the potential bathing operator, as they are required to profile the bathing water, which also includes, for the monitoring point, determining the busiest section of the beach.

3.2.6 For the vast majority of cases in Scotland, the bathing water operator is likely to be the local authority, as they have provided the facilities that dictate where most people are likely to enter the bathing water. There are relatively few privately owned designated sites in Scotland.

3.2.7 It is probable that in most cases the existing beach operator will also become the bathing water operator, as they generally possess their existing role on the basis of ownership of the land allowing access to the bathing water or the provision of facilities. A lot of beach operators already undertake many of the duties required of the Directive for the bathing water, including beach cleaning and signage. In addition, many beach operators also operate lifeguards or provide other safety provisions – not required under the Directive.

3.2.8 For freshwater sites, we propose that the bathing water operator is the person in control of the solum of the bathing water, i.e. the land underneath the designated part of the loch.

### **Q 1 - Do you agree with how we propose to identify the bathing water operator? If not, who should be responsible instead?**

3.2.9 *Relevant authorities* – this includes the local authority in which the bathing water is located, and Scottish Water.

3.2.10 *Vicinity of the bathing water* – for the purposes of providing information to bathers we propose that information is placed in the vicinity of bathing waters, expected to be the spot where most bathers access the bathing water, and likely to be under the ownership of the bathing water operator. This does not necessarily limit signage to a single site, nor does it preclude land that is not under the control of the bathing water operator.

### **Regulation 3 – Designation of bathing waters and determination of the bathing season**

3.2.11 Regulation 3 specifies that Ministers must designate sites as bathing waters where the requirements of Article 1 of the Directive may be met, in that they expect a large number of people to bathe there, and permanent advice against bathing has not been introduced. Regulation 3 also sets out the requirements of Article 3(1) to annually compile and review a list of Scottish bathing waters, the extent of such and defining the length of the bathing season relating to each site, based on the periods when the majority of bathers are present. It also specifies that Ministers are responsible for advising bathing water operators (and the relevant local authorities) of their designation status, and that SEPA and Scottish Ministers must publicise this information in order to bring it to the attention of those likely to be affected. Our proposals are discussed in more detail below.

#### ***Identification of bathing waters***

3.2.12 From 2008, Member States will be required to identify all bathing waters annually prior to the start of the bathing season, which is a change to the current situation in Scotland; identified waters are considered to be bathing waters until further notice. The Regulation proposes that Scottish Ministers must designate any site that meets the requirements of the Directive, compile a list of such sites and keep it under annual review. The list of bathing waters will have to be published on both SEPA's and the Scottish Government's websites prior to the start of each bathing season – a task already routinely undertaken.

3.2.13 Since 2005, the Bathing Water Review Panel<sup>11</sup>, an independent group chaired by Clean Coast Scotland, comprising a range of stakeholders, has been reviewing Scotland's identified bathing waters on an annual basis. This Panel invites applications from all sections of the community for new identifications, and also reviews the designation of those bathing waters which Ministers have identified with the lowest recorded usage, to ensure that we are protecting the right areas; in both the revised and the current Directive, the major determining factor in defining a bathing water is usage.

3.2.14 However, the revised Directive applies to all bathing waters where it is expected that a large number of people will bathe, rather than relying on applications to be made. From our consultation in 2004<sup>12</sup> into determining an appropriate identification process for Scottish bathing waters, we are aware that a number of sites that meet Ministers' criteria of large number of users (being 150 or more on any one day) remain undesignated. To meet the Directive's obligations, Ministers will be legally obliged to consider these sites for designation from 2008 onwards when the reporting period of the new Directive starts.

3.2.15 In addition, we intend that the Panel's review process for 2007 would uncover any other waters not currently identified nor on our list, which should be identified as bathing waters, so that these too can be included prior to the start of the 2008 bathing season. It is also expected that as a result of this process, any currently identified bathing waters which do not meet the stipulated criteria will have been de-designated prior to the start of the 2008 bathing season.

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<sup>11</sup> Bathing Water Review Panel information on Keep Scotland Beautiful website - <http://www.keepsotlandbeautiful.org/index.asp?lm=48>

<sup>12</sup> Scottish Executive (2004) *Consultation on proposals for a Bathing Water Identification Strategy* Paper 2004/7 <http://www.scotland.gov.uk/Publications/2004/04/19208/35633>

**Q2 – Your views are welcome on how we propose to establish the initial list of bathing waters under the revised Directive.**

3.2.16 It is not anticipated that the Bathing Water Review Panel would continue to meet in its present form beyond its currently funded lifespan (until 31 March 2008). Although we have not specified in the Regulation, we accept that Ministers will continue to need support – considering the addition of new sites, the deletion of others - in compiling the annual list. We also need to ensure that there are suitable opportunities for the public, in other words, bathers' involvement in the process – an important tenet of the Directive (*discussed in more detail in the section dealing with Regulation 5 – Public participation*). How this support will be provided is still up for consideration – should Ministers retain the existing independent Panel in some form or another beyond its original end date of 2008? Or could this work be undertaken by interested parties under one of SEPA's stakeholder groups established under the Water Framework Directive, particularly as the measures required to ensure compliance with the revised Directive will be an important part of the WFD's River Basin Management Plans? We will need to carefully consider whether these options will meet the needs of bathing water operators and local authorities, who have a number of new responsibilities under this Directive.

**Q3 - Should the Panel be retained to assist Ministers in compiling the annual list after 2008? Could SEPA undertake this role instead, through its work on the WFD? Have you any views on how we ensure beach operators and local authorities have an appropriate say in these matters?**

***Defining the bathing season***

3.2.17 Article 3 of the revised Directive requires that the length of the bathing season shall be annually defined for each bathing water before the start of the bathing season from 2008 onwards. We propose that Scottish Ministers will be responsible for determining this at the start of each season, informing the relevant bodies, including SEPA and bathing water operators, and publishing this information on both their website and through other means. The bathing season is defined by the Directive as “the period during which large numbers of bathers can be expected”. In Scotland this has traditionally been set as between 1 June and 15 September. It is not anticipated that this period will alter significantly for the majority of existing sites, but because of the range of climatic conditions to be found in the far north of Scotland or the islands compared to the south, we believe that there may be scope in future for different bathing seasons to be adopted in Scotland for different sites, and have provided for this in the draft Regulation.

**Q4 - Do you agree that there should be scope to set longer or shorter bathing seasons, dependent on where in Scotland bathing waters are located? What lengths should they be? Is the current bathing season (1 June – 15 September) suitable for most sites in Scotland? If you were to change it, how and why would you do it?**

***Temporary de-designation and re-designation***

3.2.18 Regulation 3's annual designation provision also gives provisions for the temporary de-designation of a bathing water where activities, such as coastal protection construction, will prevent bathers from bathing. Where it is expected bathing will resume once any works are in place, a bathing water may be re-designated based on past trends prior to the work. This Regulation also allows bathing waters that have previously had permanent advice against

bathing given to be re-designated where advice to that effect has been withdrawn, as the pollution risk has been removed.

### ***Informing operators***

3.2.19 Ministers will be responsible for informing bathing water operators and the relevant authorities the extent of the designation and season at a site prior to the commencement of the first bathing season in which the bathing water has been designated or where it is re-designated. They will do so giving sufficient time for operators to undertake their necessary responsibilities, for example, signage, in advance of the start of the bathing season.

### **Regulation 4 – General duties (of SEPA and the relevant authorities)**

3.2.20 Regulation 4 relates to information that Ministers may reasonably require from SEPA and relevant authorities about the quality of bathing water. It also provides for local authorities to seek information from other relevant authorities on the quality of bathing water within their areas. Requests must be in the form of a written notice.

### **Regulation 5 – Public participation**

3.2.21 Public participation is an important part of the revised Directive (Article 11), which we recognised in our recent strategy paper.<sup>13</sup> This is particularly true in relation to the establishment, review and updating of lists of bathing waters and their respective bathing seasons, and Regulation 5 sets out our proposals to encourage public involvement in this process.

3.2.22 The Directive's aim is to introduce a more transparent system of decision-making, something akin to that which we already have with the Bathing Water Review Panel, which was established with public participation in mind. The Panel has engaged local stakeholders, including community groups, in its process, and has also utilised the internet, the media and publications in order to get its message across.

3.2.23 We suggested in our strategy document the need to continue to encourage local community groups to apply for waters to be designated. We proposed making these available on our website for public comment, and the Regulations take account of this. It is likely that our chief means of engaging the public in these matters will be through the internet, and Regulation 5 establishes a duty on Ministers to ensure that the public have sufficient opportunity to comment on any proposals that we publish. We also stated that there would likely be a role for a stakeholder group, similar to the current Panel, to assist Ministers in the application and de-designation process. Whatever method is chosen to advise Ministers in determining the list, this will be in conjunction with the duties placed on Ministers under this Regulation to ensure that the public is both informed of the process and has an opportunity to input into it.

**Q5 - With the Bathing Water Review Panel we have instigated a process for identifying bathing waters that encourages public participation, particularly through the use of the internet and engagement with local community and interest groups. Do you have any views on how we can further public involvement in this area?**

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<sup>13</sup> Scottish Executive (2006) op cit

3.2.24 We also believe that continued use should be made by the Government, SEPA and other relevant authorities in the existing public and stakeholder networks, for example, the Scottish Coastal Forum and Clean Coast Scotland.

#### **Regulation 6 – Bathing water profiles**

3.2.25 Article 6 of the Directive requires that a profile of each bathing water is developed by 2011, providing specific information to bathers on the quality of the bathing water and the various pollution risks that might exist. We propose in Regulation 6 for a duty to be placed on SEPA to establish these profiles as we believe SEPA, through their existing bathing water monitoring and assessment work and other environmental duties, is already suited to this task. In addition, SEPA currently produce and publish Pollution Reduction Plans on their website<sup>14</sup>, which covers much of the information already required in the profile.

3.2.26 What must be contained in the profile as a minimum is clearly set out in Annex III of the Directive (replicated as Schedule 1 to the Regulations). Among the information to be provided is a description of the bathing water, an identification and assessment of the potential pollution risks, including for cyanobacteria. If a risk from short-term pollution is identified, specific information on this, including appropriate management measures to mitigate the health risks must be provided. The Directive also allows other relevant information to be included at the discretion of individual Member States. Bathing water profiles for waters classified as good, sufficient or poor will need to be reviewed regularly to ensure they are still accurate. The Directive establishes frequencies for undertaking these reviews. We propose that SEPA use these periods as the bare minimum, and would encourage more frequent reviews (as occurs with the Pollution Reduction Plans) where resources allow.

3.2.27 SEPA, in conjunction with the Environment Agency, has already been engaged in developing draft profiles to ascertain how these might look. This work has helped inform a working group established by the European Commission, at which SEPA was present, to discuss a consistent approach as to how this information might be presented across the 27 Member States. As such, it would not make sense to specify how these profiles might look in legislation while this work is ongoing; instead allow the necessary flexibility by only specifying content, rather than format.

3.2.28 The Directive provides for the bathing water profiles of contiguous bathing waters (for example, Burntisland and Kinghorn Pettycur) to be combined, a provision we are allowing SEPA to consider adopting where necessary, based on their knowledge of pollution risks.

**Q6 - Do you agree that SEPA is best placed to establish the bathing water profiles. Is there any other information that you would like to see included in the profile, in addition to that required by the Directive?**

#### **Regulation 7 – Monitoring**

3.2.29 Article 3 of the Directive establishes the requirements for monitoring bathing waters in terms of the microbiological parameters that would provide evidence of potential health risks to bathers. It also specifies that a monitoring point be identified where most bathers are to be expected, or the greatest risk of pollution is to be expected. Article 3 also specifies that a monitoring calendar be introduced for each bathing water before the start of the bathing season, from 2008 onwards. Annex IV of the Directive specifies the minimum number of samples that

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<sup>14</sup> [www.sepa.org.uk](http://www.sepa.org.uk)

need to be taken and how frequently. The Directive introduces a degree of flexibility in terms of when monitoring is undertaken, allowing samples to be taken up to four days after the date specified in the calendar. The Directive also allows samples taken during short-term pollution events to be disregarded (although only when certain management measures are in place), with a replacement taken if necessary. During abnormal situations, the Directive even provides for the monitoring calendar to be completely suspended, with new samples taken once the event is over.

3.2.30 Article 8 of the Directive requires that where cyanobacterial proliferation has been identified in the profile, appropriate monitoring is undertaken. Article 9(1) requires that when the bathing water profile indicates a tendency for the proliferation of macro algae and/or marine phytoplankton, investigations are undertaken to ascertain their acceptability and health risks. Article 9(2) requires that bathing waters are inspected visually for pollution from tarry residues, glass, plastic, rubber or any other waste.

### ***Monitoring***

3.2.31 Regulation 7 (and schedule 2) sets out our proposals for meeting these requirements. We propose that SEPA continue their current role in terms of monitoring for the microbiological parameters, Intestinal enterococci and Escherichia coli.

### ***Monitoring point***

3.2.32 For the microbiological parameters, we believe that SEPA should be responsible for determining the location of the fixed monitoring point. Schedule 2 specifies that this should be located where most bathers are present or where the bathing water profile has indicated that the greatest risk of pollution is expected. Although not required under the Regulations, SEPA may need to consult with the bathing operator, if necessary, to determine the busiest portion of the bathing water. Schedule 2 also specifies, where possible, the depth of water in which samples should be taken. We have also proposed that SEPA may undertake sampling from another point if sampling from the original location is either not possible (for example, access is restricted) or would pose a danger to the sampler (for example, coastal protection undergoing construction).

### ***Monitoring calendar and number of samples***

3.2.33 We also propose that SEPA establish the monitoring calendar specifying the dates for sampling at each bathing water, taking account of the minimum number of samples required under the Directive. As SEPA will be carrying out the sampling, it makes sense to allow them to determine when and how often they will be doing it at each site, as they do under the current Directive, in order to determine how much resources this work will entail. We do not propose setting an upper limit under the regulation on the number of samples that SEPA must take (the lower limit is set by the Directive), leaving this to SEPA's discretion. Part 3 of schedule 2 establishes the minimum number of samples that must be taken and when, as specified in the Directive.

**Q7 - Do you agree that SEPA should be allowed to set the maximum number of samples that it intends to take at each bathing water, as it does at present?**

### ***Flexible sampling***

3.2.34 We also intend to transpose the Directive's allowance for samples to be taken up to four days after the date proposed by SEPA in the monitoring calendar. SEPA undertook a trial of flexible sampling in 2006, to better understand the issues that might result from introducing these changes in practice. Many of Scotland's bathing waters are at the highest risk of pollution during and immediately following periods of rainfall. This flexibility would allow, as the Directive intended, for sampling times to be delayed during such periods, when it is most unlikely that anyone will be bathing, and information would be in place to discourage such activities in order to avoid a risk to health. It would also mean that sampling reflects the quality of the water when bathers are actually present.

3.2.35 It is our intention that SEPA should utilise this flexibility where necessary. However, we accept that this will present additional logistical challenges for SEPA, as existing sampling uses a fixed timetable of visits to bathing waters. We will leave it for SEPA to decide when and where they may wish to utilise this provision in practice.

**Q8 - Do you have views on SEPA's use of the Directive's provision for flexibility in their sampling? Should there be any restrictions on its usage?**

### ***Monitoring during exceptional circumstances or abnormal events***

3.2.36 The Regulations also provide for SEPA to suspend the monitoring calendar during abnormal situations and to take additional samples once the event has passed to ensure the minimum number is achieved. If the length of the incident exceeds the length of the bathing season, the Regulations relieve SEPA of their responsibility of taking additional samples. In all cases where SEPA suspends the monitoring calendar during such events, certain management measures must be undertaken, including notifying Ministers and the reasons given for the suspension. These management measures, including determining whether an event is exceptional or abnormal, are specified in Regulation 13.

### ***Monitoring during short-term pollution***

3.2.37 Where the appropriate signage and management measures are in place (Regulations 8 and 12), SEPA may disregard samples taken during short-term pollution events (event of less than 72 hours duration). Schedule 2 sets out clearly that where such an event is recognised, SEPA may exclude the failing sample. The Directive limits the number of samples disregarded in such a manner to one sample or 15% of the total number of samples taken, whichever is greater.

3.2.38 The bathing water profile (Regulation 6) requires that any risks of short-term pollution are identified. This will require SEPA to undertake appropriate modelling and investigative work at bathing waters that might be susceptible to short-term pollution events. This will include building up knowledge of the possible source of pollutants. SEPA, through their current investigative work, already has a good understanding of the risks to each bathing water. They hope to expand on this knowledge through current research into identifying the source of bacteria through DNA analysis, which they and the Government are currently involved in.

3.2.39 To disapply samples, SEPA will need to accurately predict or have knowledge that a bathing site could be, or is of poor quality on the day that the sample was taken. For predicting

poor water quality, knowing the source of the pollutant would only be one part – SEPA will also need to know the trigger for pollution events. For most short-term events, rainfall is known to be the major factor, either washing diffuse pollution into water courses that run into the sea or overwhelming the existing capacity of the sewerage system. However, in reality it is not as simple as this. SEPA will need to ascertain where in a catchment precipitation is most likely to have an impact and how soon after wet weather will a short-term pollution event occur. SEPA is continuing to improve its knowledge in such areas, and investigating innovative methods, such as radar, to determine more clearly the impact that rainfall might have. Other events can also play a part, including tidal and wind conditions. SEPA needs to determine all these factors when trying to predict water quality.

3.2.40 SEPA has already undertaken predictive modelling work at ten bathing waters in Scotland as part of an innovative Scottish Government signage project to provide predictive information about the quality of bathing waters to potential bathers (see Regulation 8 below). SEPA's modelling system has recorded a high rate of accurate predictions during both the initial project work and throughout the last three bathing seasons, when ownership of the signs was transferred to SEPA. We will leave it to SEPA's scientific expertise to determine at which of Scotland's bathing waters it can accurately predict short-term pollution events. Where it believes it can do so, robust prediction systems will need to be put into place, along with the warning systems required under Regulation 8.

3.2.41 To allow for samples to be discounted, SEPA will also need to determine quickly whether the predicted events are actually poor. This requires quick laboratory assessment and confirmation. Obtaining results from microbiological testing can currently be measured in days rather than hours. SEPA is fully aware of the need to improve the speed of testing in order to measure for short-term pollution events, and will be contributing towards a joint UK study into developing rapid analyses methodology, which the Government also hopes to become involved with.

**Q9 – SEPA's predictive abilities have been suitably tried and tested over the past few bathing seasons. Therefore we propose that they be allowed to discount samples where they predict or are aware of short-term pollution and appropriate warnings have been given. Do you have any views on this approach?**

***Monitoring of cyanobacteria and investigation of macro-algae and marine phytoplankton***

3.2.42 We propose that SEPA be responsible for monitoring for cyanobacteria where they have identified a risk of such in the profile, and for investigating the health risks and /or acceptability of macro algae and marine phytoplankton, where this has been identified in the profile.

***Monitoring of other waste***

3.2.43 The current Directive already requires SEPA to visually monitor certain types of waste. We believe SEPA should continue this role, but in conjunction with the bathing water operator. This would exclude monitoring that may already be being carried out under other legislative regimes, for example, radioactivity or contaminated land.

## ***Monitoring techniques***

3.2.44 Annex V of the Directive establishes the particular rules that must be followed in terms of undertaking sampling of the microbiological parameters. Rather than setting these out in a schedule to the Regulations, we believe that reference to the sampling methods can be better achieved through a Direction to SEPA under Section 40 of the Environment Act 1995. We favour the use of Directions here as the rules for sampling techniques have been identified as a prime candidate for refinement under Article 15 of the Directive, and the use of Directions will allow the flexibility of taking these changes on board without having to amend the Regulations. Any Directions issued under Section 40 will be made available publicly through the Edinburgh Gazette.<sup>15</sup>

## **Regulation 8 – Public information**

### ***Statutory dissemination of information***

3.2.45 Article 12 of the revised Directive asks that information on water quality, including the bathing water's classification and the potential risks to it are made easily and readily available to the public. This includes both at an accessible place in the near vicinity to each bathing water and through other appropriate media, including the internet. The provision of information must be made available from 2012.

3.2.46 Providing information is very important. It enables the public to be aware of any risks to their health that might exist and therefore be able to make an informed choice on whether to bathe or not. In Scotland, we are very aware of the importance of clear information being given to bathers and the positive benefits it may have. In 2003, the electronic variable messaging signs mentioned in paragraph 3.2.40 above were trialled at a number of bathing waters in Scotland. These were designed to inform bathers of the predicted quality of the bathing water<sup>16</sup>. Market research<sup>17</sup> carried out following installation of the signs showed that signage was positively received, with 80% of potential bathers stating that the sign had increased their awareness of water quality.

### ***Signage***

3.2.47 Regulation 8 proposes that beach operators should be responsible for installing signage in the vicinity of each bathing water, in a place accessible to the public. We believe it is sensible for the bathing water operator to take on the responsibility for what, for many, will be a continuing role - most existing signage at beaches is installed by the existing beach operator, who is likely to be the bathing water operator under these Regulations. Not only do they have an interest in providing information to people who frequent the beaches they manage, but with their local knowledge of the site, they will be most suited to determining where is the most appropriate place to display this information so that it is accessible to the public. Signage would be required to be installed in advance of each bathing season.

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<sup>15</sup> Edinburgh Gazette on-line <http://www.gazettes-online.co.uk/home.aspx?geotype=Edinburgh>

<sup>16</sup> Scottish Executive/Faber Maunsell (2003/2004) *Bathing water signage pilot project* [www.scotland.gov.uk/bathingwaters](http://www.scotland.gov.uk/bathingwaters)

<sup>17</sup> Scottish Executive/mruk (2004) *Assessing the effectiveness of variable messaging signs to inform beach users about bathing water quality.* <http://www.scotland.gov.uk/Topics/Environment/Water/15561/VMSREPORT>

3.2.48 The Regulation requires that the sign provides certain information, including the existing classification, whether a bathing prohibition has been imposed and the reasons for, a general description of the site (including the use of maps) and the potential for short-term pollution, as well as the relevant management measures to prevent, reduce or eliminate causes of pollution. SEPA will be responsible for providing the bathing water operator with the necessary information for the sign. The Directive emphasises the importance of using easily understandable signs or symbols to convey the necessary information, as well as clear language. Rather than developing their own individual symbols, Member States have chosen to work together with the Commission to devise a uniform set that will aid understanding across the European Union. The working group established to undertake this task has yet to deliver its recommendations, therefore we are unable to specify in the Regulations what form these should take. We will issue guidance once the format of the symbols has been agreed.

3.2.49 The Regulations do not specify the style or size of the sign, nor what it should be made of. We propose leaving this to the discretion of the bathing water operator, as they may wish their sign to fit in with an existing identity. Nor do the Regulations specify the maximum amount of information that can be contained on the sign – just the minimum legal requirements. It is proposed guidance will be issued to assist bathing water operators in meeting their signage requirements, included suggested designs for signage, as we recognise the potential economies of scale for operators if a common approach is chosen.

**Q10 - We propose that to fulfil the requirement to provide public information, bathing water operators will be required to publicise this information through the use of signs. Do you agree that beach operators should be responsible for installing signage?**

3.2.50 The Regulations also give the opportunity for the bathing water operator or former operator to request that the local authority install the sign, but at the operators' expense. Equally, if the operator fails to provide signage or request that the local authority does instead, the Regulations give power to the local authority to serve notice on the operator to undertake the necessary work. Failure to do so would lead to the local authority carrying out the necessary work at the operator's expense.

#### ***Information for former bathing waters***

3.2.51 Where permanent advice against bathing has been issued and has not been withdrawn, the Regulations require that the operator of the former bathing water displays information in the vicinity of the site to this effect. The information would also have to state the reasons as to why bathing was advised against.

#### ***Information during short-term pollution or abnormal events***

3.2.52 The Directive makes it clear that providing the public with advance warnings of the risks of short-term pollution and abnormal events is of paramount importance. Providing advice about the risks of short-term pollution, in tandem with other management measures (Regulation 12) is also a prerequisite to being able to discount samples taken during short-term pollution incidents.

3.2.53 As we mentioned above, the Government, in conjunction with SEPA, has already trialled the use of electronic signs which display real-time information. In our bathing water

strategy<sup>18</sup>, we fully recommended the value of such technology, and as such, the Regulation provides for warnings of short-term pollution to be given through SEPA signs, where these exist. We mentioned in the strategy our support to continue funding, where this is available, for the existing ten signs from 2008 onwards, and to extend signage to other sites where this may be appropriate. SEPA is proposing that up to an additional three signs be installed with effect from next year's bathing season.

3.2.54 When short-term pollution occurs at bathing waters where SEPA signage is not available, there is still a requirement to take appropriate management measures to prevent bathers' exposure to poor water quality. This would also cover abnormal events and all other occasions where advice against bathing may be given. For abnormal events, information of its nature and expected duration is required to be displayed. Regulation 8 proposes that in such situations SEPA would inform the local authority, who (for expediency) would amend the bathing operator's sign with the necessary additional information required to inform the public of the pollution risks. The Regulation requires that the sign is designed in such a way as to allow additional information to be added when necessary. It is anticipated that SEPA, local authorities and the bathing water operators will be required to design a contingency plan for such situations.

### ***Internet and other appropriate media***

3.2.55 To meet the Directive's requirements in respect of providing information over the web and other appropriate media, the Regulations propose that SEPA must, in relation to each bathing water, publish certain information on its website. This includes not only the information required on the signage, but also the current profile, the bathing water's classification over the last three years, matters relating to short-term pollution, the causes of pollution, appropriate management measures and the results of monitoring. Most of this information, including a record of monitoring results, is already contained on SEPA's website, so we don't envisage that obtaining or providing this information will pose significant problems for SEPA.

3.2.56 The Regulations also require SEPA to provide certain information on their website in several languages, taking account of the location of the bathing water and ease of public understanding. This includes the list of bathing waters, their classification and the potential for pollution that might pose a risk to bathers' health.

**Q11 - What languages do you think would be appropriate for inclusion on SEPA's website? Should this relate to official EU languages, native languages of Scotland (Gaelic, Scots) or those used by ethnic minorities?**

3.2.57 As the ways in which we access information continues to change and new media continue to emerge, Regulation 8 requires that SEPA should make use of additional media and continue to develop their communications to take advantage of these developments as they occur. SEPA is already at the forefront of innovative ways to inform bathers, including a text messaging service and phone advice lines for the ten sites that they currently offer predictions for.

**Q12 - What new technology would you suggest SEPA should adopt to provide bathing water information?**

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<sup>18</sup> Scottish Executive (2006) Paper 2006/6 op cit

## **Regulation 9 - Bathing water assessment**

3.2.58 The revised Directive introduces quite a significant change in terms of assessing the quality of a bathing water. Previously, compliance was determined on the basis of that year's monitoring results alone. Article 4 of the revised Directive requires that assessments are based on the samples taken over four separate bathing seasons – the most recent one and the three preceding – with a few exceptions, for example where the bathing water is newly identified. Rather than giving a snapshot view as with the current Directive, this allows a truer and more consistent picture of the quality of the bathing water over time, therefore showing where improvements in water quality may still be required.

3.2.59 The Regulation proposes that SEPA be required to carry out the assessments exactly as determined under the Directive. This sets the minimum number of samples that should be in each sample set, both dependent on the length of the bathing season and the number of years to be assessed.

3.2.60 The Directive also allows Member States to sub-divide or group together bathing waters on the basis of assessments carried out, therefore recognising when and where stretches of water may be considered similar or not. Regulation 9 provides Ministers with this power, to be undertaken where assessments carried out by SEPA justify such action.

## **Regulation 10 – Bathing water classification (*including standards and discounting*)**

3.2.61 Regulation 10 provides for SEPA to classify bathing waters under the new classifications introduced by Article 5 of the Directive – *poor, sufficient, good* or *excellent*. These classifications are determined on the basis of the assessments undertaken, and are set out in Schedule 3 of the Regulations.

3.2.62 Compared to the existing Directive, the new standards are a lot tougher, raising the bar in recognition of an overall improvement in European bathing water quality. The Directive also differentiates between the quality levels for saline and freshwater sites, with stricter standards for the former, on the basis that a lower health risk is perceived from freshwater bacteriological levels.

### ***Excellent***

3.2.63 *Excellent* is the highest water quality indicator. Based on a 95-percentile evaluation, counts must not exceed 100 colony forming units (cfu) of Intestinal enterococci per 100 millilitres (ml) of seawater, or 200 cfu for freshwater. For *Escherichia coli*, the other microbiological parameter, this is 250 cfu and 500 respectively. Evaluations are based on such percentiles to reduce the risk of statistical anomalies when using the small data set of samples that the Directive requires.

### ***Good***

3.2.64 *Good* is equivalent to the existing Directive's guideline standard. For Intestinal enterococci it is 200 cfu per 100 ml for seawater and 400 cfu for freshwater, again based on a 95-percentile evaluation. For *Escherichia coli*, the figures are 500 and 1000 respectively.

## ***Sufficient***

3.2.65 *Sufficient* is the standard that the Directive requires all bathing waters to reach by the end of the 2015 bathing water season. This provides the same level of health protection as the minimum requirements of the existing Directive. It is envisaged as a stepping stone to the better *good* and *excellent* levels, with the Directive requiring realistic and proportionate measures to be taken to increase the number of bathing waters attaining a higher status. For Intestinal enterococci, counts must not exceed 185 cfu per 100 ml for saline samples and 330 cfu per 100 ml for freshwater over a 90-percentile evaluation. For Escherichia coli, the figures are 500 and 900 respectively. The Regulations do not specifically state that all bathing waters reach *sufficient* by 2015. However, it will be Scottish Ministers' policy that this is achieved where practicable.

3.2.66 The classification is determined on the basis of assessment against these standards over the four bathing seasons. Water quality must be at least equal to or better than the percentile values given for each classification.

## ***Poor***

3.2.67 Waters failing to achieve *sufficient* status would be classed as *poor* under Regulation 10. Sites classified as poor can remain in compliance with the Directive if certain management measures are undertaken. These are set out in Regulation 11 (below). Regulation 11 requires that management measures are undertaken to ensure that *poor* bathing waters can be classified as *sufficient*, *good* or *excellent*.

## ***Discounting***

3.2.68 Classification of bathing waters as *sufficient*, *good* or *excellent* where they have experienced short-term pollution events and where appropriate management measures are in place (Regulations 8 and 12) can only be made where the total number of failing samples discounted (as provided for under Schedule 2 of the Regulations) is either one sample per annum or 15% of the total number of samples taken during the assessment period, whichever is greater.

## ***Permanent advice against bathing***

3.2.69 To meet the requirements of Article 5, the Regulation also specifies that under certain circumstances SEPA must issue permanent advice against bathing (which it would include on its website), including to the bathing water operator. The operator would be required to display this information on signage under Regulation 8, unless a SEPA sign is installed as per Regulation 11. Permanent advice, which the Directive (and therefore Regulations) has determined means lasting at least one bathing season, must be issued when the bathing water is classified as *poor* for five consecutive years. As the first classification must be made by the end of the 2015 bathing season, advice would be issued under this provision from 2020 onwards.

3.2.70 The Directive also allows for permanent advice to be given prior to the end of the five year period, where it has been determined to be technically infeasible or disproportionately expensive to achieve compliance with the *sufficient* standard. The Regulation therefore provides for permanent advice to be issued before the end of the five year period if, after consultation with the relevant authorities, Scottish Water and Scottish Ministers, SEPA

considers that achieving *sufficient* status would be infeasible or disproportionately expensive. The feasibility of achieving *sufficient* will be easier to determine than whether the measure is disproportionately expensive, as courses of action will be either technically possible or not. However, rather than investigate such issues in this consultation paper, we propose leaving these to be determined in the Scottish Government's forthcoming impact assessment of measures required to comply with the Water Framework Directive's River Basin Management Plans, of which bathing waters will be an integral part.

3.2.71 The Regulation also provides for SEPA to withdraw permanent advice against bathing at a former bathing water if the water quality returns to a quality that if it were a bathing water it would be classified as *sufficient* or above. In such cases, SEPA must inform Ministers and the former operator that it has withdrawn its permanent advice against bathing.

3.2.72 It is our policy intention, in order to protect public health, that permanent advice would continue to be given each bathing season until such time as bathers choose not to bathe at a former bathing water or SEPA decides to remove its permanent advice due to water quality improvements.

### **Regulation 11 – Management measures at “poor” bathing waters**

3.2.73 To meet the requirements of Article 5, a bathing water can be classified as *poor* under Regulation 10 and still remain in compliance with the Directive if certain management measures are put in place.

3.2.74 Importantly, in order to protect bathers' health, SEPA will be responsible for ensuring that appropriate information is provided to the public about the classification (both through signage, the internet and by other means). Where a SEPA controlled sign is in existence, as well as maintaining quality predictions, the sign must also carry advice on that current year's *poor* classification.

3.2.75 The reasoning behind the Directive allowing up to five years of *poor* classification is to enable enough time for Member States to implement measures to improve the quality of the affected waters to that of *sufficient* status or above. Therefore, the Regulation requires that SEPA shall also be responsible for identifying and addressing the causes of the failure, and implementing appropriate measures to achieve compliance. Such measures may be through existing or forthcoming regulatory regimes or other forms of managing the environment.

### **Q13 – Do you agree that this is an appropriate approach to improving *poor* bathing waters? If not, what would you suggest?**

3.2.76 Where it is recognised (Regulation 10) that to obtain *sufficient* status or above is not feasible or is disproportionately expensive compared to the benefits it would bring, SEPA would not be obliged to undertake improvement measures at such sites.

### **Regulation 12 – Management measures at bathing waters subject to short-term pollution**

3.2.77 The Directive (Annex II) requires that where a bathing water is subject to short-term pollution (i.e. not exceeding 72 hours in duration), certain management measures must be in place. This not only includes surveillance and early warning systems (as provided through SEPA's signs), but measures to prevent, reduce or eliminate the causes of this pollution.

3.2.78 Regulation 8 already puts a duty on SEPA and local authorities to display appropriate warnings to the public when short-term pollution is present or predicted. Where such pollution is detected, SEPA, through existing or forthcoming regulatory regimes or other forms of managing the environment, must take mitigating action to prevent, reduce or eliminate these risks.

3.2.79 Regulation 12 also requires SEPA to inform the bathing water operator when such pollution is present or predicted, the reasons for it, and any actions they undertake as a result.

### **Regulation 13 – Management measures at bathing waters in abnormal situations and exceptional circumstances**

3.2.80 The Regulations (from the Directive) define an abnormal situation as “an event or combination of events impacting on water quality that SEPA would not expect to occur, on average, more than once every four years”, i.e. torrential rainfall above this average, similar to provisions that exist under the current Directive. This is understood to be related to microbiological pollution. An exceptional circumstance is classed as “an incident at a bathing water that is unexpected and has, or could be expected to have, an adverse impact on bathers’ health”. This could be as a result of either anthropogenic or natural causes, for example, the collapse of a sewage mains, or inland flooding that overwhelms sewerage infrastructure, and could include other forms of pollution or risks to human health as well as microbiological. The breakdown of a pump at Scottish Water’s Seafield sewage works in April 2007, although outwith the bathing season, illustrated the need for swift action from the authorities in order to protect public health, particularly in relation to the provision of accurate and timely information.

3.2.81 We propose that SEPA and the local authority are best placed to determine collectively whether an abnormal event or exceptional circumstance has occurred, as they would possess the greatest technical expertise on these matters. Such an incident can be brought to the attention of either party by the other, or by the bathing water operator. They may also consult and take evidence from Scottish Water, the local health board and others as they see fit in determining whether the event warrants such a determination. Where there is a disagreement between the parties, we propose that SEPA’s determination of the event is final.

### **Q14 – Do you agree that local authorities and SEPA should determine whether an event is abnormal or exceptional? If not, who would be better placed to undertake this role?**

3.2.82 Where an exceptional circumstance or abnormal situation has been determined, Regulation 13 requires that the relevant local authority (for expediency) is responsible for updating the bathing water operator’s signage and erecting further signs for the duration of the event. During the aforementioned Firth of Forth sewage spill, local authorities had been largely responsible for issuing appropriate warnings, and as such we believe they are best placed to undertake this role.

3.2.83 The Regulation requires that the local authority must also consult with the other interested parties, Scottish Ministers and the person with proprietorial interest in the bathing water as to whether and what action should be taken to remove or reduce the risk to bathers’ health. They would also need to take into account the likely duration of the event and the effectiveness of the signs in dissuading bathers. This Regulation also gives local authorities relevant powers to undertake the necessary actions, including entry onto land.

**Q15 – We believe that local authorities would be best placed to undertake the relevant roles to protect public health during abnormal events/exceptional circumstances. Do you agree?**

3.2.84 Further action to remove the risk to bathers is likely to be through recourse to SEPA's powers under the Controlled Activities regulatory regime.

#### **Regulation 14 - Management measures at bathing waters affected by cyanobacterial proliferation**

3.2.85 Article 8(2) of the Directive requires that where cyanobacterial proliferation occurs, and a health risk has been identified or presumed, adequate management measures have to be taken immediately to prevent bathers' exposure. Cyanobacteria or blue-green algae as it is also known (cyanobacteria comes from the bluish colour of the bacteria) is not a common occurrence at Scottish bathing waters, but it can occur in quantity in lochs and coastal waters, and as we identified in paragraph 2.2.3 it does pose a considerable health risk. Health Protection Scotland have identified between 30 to 40 incidents being reported throughout Scotland annually by SEPA, local authorities and health boards.<sup>19</sup>

3.2.86 Cyanobacteria in high concentrations in the water column can form blooms and, when blown onto shore, form scums which may be centimetres thick. Cyanobacteria may also grow on the bottom of shallow water bodies and on shoreline rocks. They occasionally form thick gelatinous mats, which may be exposed as the water level falls or may detach from the bottom and reach the shoreline. These mats are sometimes mistaken for sewage discharges. The Directive identifies proliferation as being an accumulation of cyanobacteria in the form of a bloom, scum or mat.

3.2.87 Regulation 14 requires that where SEPA, the relevant local authority or the bathing water operator is aware of a cyanobacterial proliferation that could pose a risk to bathers' health, that they ensure each other and the local health board are fully informed. SEPA already have a duty under Regulation 7 to monitor for cyanobacteria where the profile indicates a tendency for its proliferation.

3.2.88 When such an outbreak occurs that is deemed to be a sufficient health risk, the Regulation obliges the local authority to take the necessary lead - updating the bathing operator's signage and erecting further signs for the duration of the event. As with short-term pollution, abnormal events, and exceptional circumstances, we have proposed that local authorities undertake this role due to their experience in public health protection (environmental health) and for expediency.

3.2.89 The Regulation requires that the local authority must also consult with the other interested parties, including Scottish Ministers, the local health board and the person with proprietorial interest in the bathing water as to whether and what action should be taken to remove or reduce the risk to bathers' health. They would need to take into account the likely duration of the cyanobacterial proliferation, its extent and the likelihood of it to increase. The continuing effectiveness of the signs in dissuading bathers would also need to be taken into account. This Regulation also gives local authorities relevant powers to undertake the necessary actions, including entry onto land to affix signs or remove the cyanobacterial scum or mat.

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<sup>19</sup> Scottish Executive Health Department (2007) p7

### ***Removal of cyanobacteria***

3.2.90 Where it is decided to remove the cyanobacterial scum or mat from the bathing water, we propose that the local authority would undertake this task.

**Q16 – We believe local authorities would be best placed to undertake the relevant roles to protect public health during cyanobacteria proliferations. Do you agree?**

### ***Scottish Government Guidance***

3.2.91 While reference is not made in the Regulations themselves, it is likely that local authorities and the other interested parties will utilise existing Scottish Government guidance, “Blue-Green Algae (Cyanobacteria) in Inland and Inshore Waters: Assessment and Minimisation of Risk to Public Health”<sup>20</sup> in helping them undertake their respective duties under the Regulations. This document, published in 2007, requires plans for dealing with algal outbreaks to be in place for each health board area, and sets out suggested courses of action where proliferation is encountered. It also encourages close partnership working among authorities, and should mean that SEPA, local authorities and health boards will have developed suitable working arrangements for dealing with algal pollution before the Regulations’ own specific provisions come into force.

### ***Measures to combat cyanobacterial proliferation***

3.2.92 Cyanobacteria proliferation, although naturally occurring, is often exacerbated by excess nutrients from anthropogenic sources. These can either be from sewage discharges or from diffuse agricultural sources, primarily fertilisers being washed off the fields. In terms of management measures to reduce this risk, we believe that existing measures to meet the standards of the Urban Waste Water Treatment Directive<sup>21</sup>, the Water Framework Directive and the Nitrates Directive<sup>22</sup> will assist in reducing further the already small risk of cyanobacterial proliferation at Scottish bathing waters.

### **Regulation 15 – Management measures at bathing waters affected by macro-algae and marine phytoplankton**

3.2.93 Article 9(1) requires that where a bathing water profile indicates a tendency for proliferation of macro-algae and/or marine phytoplankton, investigations must be undertaken to determine their acceptability and the health risk that they pose to bathers. Where they are deemed unacceptable and/or a health risk to the public, adequate management measures shall be taken. This specifically includes information to the public.

3.2.94 Before specifying how we propose to meet the Directive’s requirements in the Regulations, it would be useful to explain that there are differences in potential health risk and unacceptability between macro-algae and phytoplankton.

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<sup>20</sup> *ibid*

<sup>21</sup> Urban Waste Water Treatment Directive (91/271/EEC)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31991L0271:EN:NOT>

<sup>22</sup> Nitrates Directive (91/676/EEC) <http://ec.europa.eu/environment/water/water-nitrates/directiv.html>

## ***Macro-algae***

3.2.95 In terms of macro-algae, or seaweed as it is more commonly known, the most prevalent type in Scottish coastal waters is kelp. Growing seaweed does not pose a health risk in its natural environment, though can perhaps be a safety issue for bathers if the bathing water has huge amounts of it growing within the designated area (swimmers getting caught up in it, bathers slipping on rocks). We interpret the Directive as referring to dislodged macro-algae deposited on shore. This can collect in huge amounts up to a metre high at particular beaches, especially after storm events. Such deposits are most common between the autumn and spring equinoxes, therefore outwith the bathing season. However, it is likely that there may still be residual amounts of macro-algae on beaches at the start of the bathing season, as large quantities would take a long time to decompose. There are also high tides during the bathing season – for example at the end of August (Lammas tide) at St Andrews which can deposit quite large amounts of seaweed on the beach. It is these deposits that would likely give rise to any potential health risks posed by seaweed, for as well as litter being trapped within it, there are health concerns associated with it rotting, particularly during the summer months.

3.2.96 We recognise that acceptability is likely to be judged on aesthetic or nuisance grounds, rather like litter, than any risk it poses. There may be competing pressures regarding its removal - for example, one of the criteria for the Foundation for Environmental Education's Blue Flag award<sup>23</sup> is that some seaweed is left on the beach to aid biodiversity. While there is no requirement under the EC Habitats Directive<sup>24</sup> to retain macro-algae, our view is that there should be some flexibility on what and when it needs to be removed, which would be dependent on the amount present and the nuisance that it is causing (i.e. how much litter is trapped in it and whether it is emitting odours as a result of decomposition). There may be a need for separate guidance, perhaps similar to the litter Code of Practice<sup>25</sup>, whereby litter cleaning is graded depending on the use of the beach. It would also allow some retention for biodiversity purposes as required under the Blue Flag award scheme.

## ***Marine phytoplankton***

3.2.97 Marine phytoplankton is a mixture of immature macro algae and other micro plants and algae found at the top of the water column. While occurring naturally, it has also been suggested that anthropogenic sources of nutrients (e.g. sewage outflows and agricultural runoff) and a warming of sea temperatures has increased the level of phytoplankton blooms (where there is a rapid growth in the water column) found in the sea. Certain phytoplankton (dinoflagellates) that cause such blooms also produce toxins, which can pose a health risk. In addition, toxins in the algae that cause red tide can actually become airborne, which also poses a risk to bathers. Many of the risks associated with toxin-producing phytoplankton are similar to those from cyanobacteria.

3.2.98 It is therefore likely that marine phytoplankton will be considered in terms of its health risk before being considered on the basis of acceptability, while macro-algae will be considered more in terms of acceptability.

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<sup>23</sup> Foundation for Environmental Education op cit

<sup>24</sup> Habitats Directive (92/43/EEC) <http://eur-lex.europa.eu/LexUriServ/site/en/consleg/1992/L/01992L0043-20070101-en.pdf>

<sup>25</sup> Scottish Executive (2006) *Code of Practice on Litter and Refuse issued under section 89 of the Environmental Protection Act 1990* October 2006 SE/2006/164 <http://www.littercode.org/docs/0043662.pdf>

### ***Determining a proliferation***

3.2.99 SEPA, in compiling the bathing water profiles under Regulation 6, will have identified whether particular bathing waters are more prone to macro-algal and marine phytoplankton proliferations. Regulation 15 proposes that where SEPA, the relevant local authority or a bathing water operator considers that there is a proliferation at a bathing water which is unacceptable or a health risk, agreement must be reached among all parties and the local health board.

3.2.100 In determining whether the proliferation is a health risk, the Regulation proposes that the threat of disease should chiefly be taken into account, although direct physical injury to bathers would also be considered where this was perceived to be a significant risk. The views of the health board would also need to be listened to.

3.2.101 A proliferation would be determined as unacceptable, upon consideration of its extent or volume; whether it was unsightly; whether there was any smell or effluent emitting from it; and the amount of waste or litter that was contained within it. To take account of biodiversity issues highlighted previously, we propose that account is also taken of any impact upon the ecosystem that its removal might have.

3.2.102 If a proliferation was determined to be a health risk, this takes precedence in the Regulations and it would not need to be considered on the grounds of acceptability as well.

3.2.103 Where disagreement occurs as to whether a proliferation has a health risk or is unacceptable, SEPA's decision shall be final.

### ***Action to be taken once a proliferation has been determined***

3.2.104 Where it has been determined that a proliferation is a health risk or unacceptable, the Regulations propose that the local authority takes the necessary lead - updating the bathing operator's signage and erecting further signs for the duration of the event. As mentioned previously, we have proposed that local authorities undertake this role due to their experience in public health protection (environmental health) and for expediency.

3.2.105 The Regulation requires that the local authority must also consult with the other interested parties, including Scottish Ministers, the local health board and the person with proprietorial interest in the bathing water as to whether and what action should be taken to remove or reduce the risk to bathers' health. They would need to take into account the likely duration of the proliferation, its extent and the likelihood of it to increase. The continuing effectiveness of the signs in dissuading bathers would also need to be judged if the proliferation had been determined to be a health risk. This Regulation also gives local authorities relevant powers to undertake the necessary actions, including entry onto land to affix signs or remove the macro-algae or marine phytoplankton.

### ***Removal of marine phytoplankton***

3.2.106 Where it is decided to remove the marine-phytoplankton from the bathing water the local authority undertake this task.

### ***Removal of macro-algae***

3.2.107 As mentioned above, there may be scope for guidance to be produced to assist the authorities in determining the unacceptability of macro-algae. Macro-algae is less likely to be classed as a health risk material, although its removal if necessary would also be carried out by local authorities.

**Q17 – We believe local authorities would be best placed to undertake the relevant roles to protect public health during macro-algae and marine phytoplankton proliferations. Do you agree?**

### ***Scottish Government Guidance***

3.2.108 As with cyanobacteria outbreaks, it is likely that local authorities and the other interested parties will utilise the existing Scottish Government blue-green algae guidance in helping them undertake their respective duties for marine phytoplankton under the Regulations.

### **Regulation 16 - Management measures at bathing waters affected by pollution (such as tarry residues, glass, plastic, rubber or any other waste)**

3.2.109 We are aware that even when a bathing water is of good quality, the public's perception will remain that a beach is 'dirty' if litter is present. Studies by the Marine Conservation Society have suggested that on average there are 2,091 items of litter per kilometre of the Scottish shoreline.<sup>26</sup> Tackling coastal litter is obviously an important issue and the Directive specifically takes account of this in terms of bathing waters. Article 9 requires that where pollution such as tarry residues, glass, plastic etc. is found following monitoring by either SEPA or the bathing water operator, adequate management measures should be taken. This includes relevant information to the public.

3.2.110 Regulation 16 proposes that remedial and restorative measures are undertaken where SEPA, the bathing water operator or the relevant local authority is aware of such pollution. We propose that where such waste is present, each of the interested parties must notify the others and the person with proprietorial interest of the occurrence. It is likely if waste is to be found routinely on the bathing water during the season that the interested parties can alert each other to that fact, so perhaps reducing the need to keep others informed each time waste is discovered on the bathing water. However, if the waste is unusual or poses a particular health risk, it would be important that all parties are informed, even if a general notification had already been given at the beginning of the season.

3.2.111 Where waste is present, we propose that the bathing water operator be responsible for undertaking such remedial or restorative measures, including information, that are necessary in order to remedy or mitigate the impact of the pollution. The operator can also make a request to the local authority to undertake such action, but this would have to be at the operator's own expense.

3.2.112 In terms of the operator's obligation to provide information, this is likely to be in the form of signage, if appropriate. For general waste, we would not expect constant warnings of waste pollution to be displayed, rather an overall message on the fixed sign required under

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<sup>26</sup> Marine Conservation Society (2007) *Beachwatch 2006: The Annual MCS UK Beach Litter Survey Report* [http://www.adoptabeach.org.uk/pages/page.php?cust\\_id=20](http://www.adoptabeach.org.uk/pages/page.php?cust_id=20)

Regulation 8 that the bathing water may be prone to waste pollution. Where there are specific incidents of other waste which the operator, SEPA or the local authority deem a health risk and that are not covered under existing legislation, we would expect specific signage to be installed during the occurrence.

3.2.113 We would expect the necessary remedial or restoration measures to entail the removal of the waste from the bathing water, where this is practicable. We recognise that what constitutes waste posing a pollution threat can be subjective. Therefore to assist operators, we propose that guidance may be issued to help assess the amount of pollution that would require remedial or restorative measures and what these measures might entail. Similar guidance already exists for local authorities in terms of the Code of Practice on litter.<sup>27</sup> The Regulations give the bathing water operator powers to enter onto the foreshore to undertake the necessary remedial work. The Regulation specifies that this should be carried out within 14 days from when the operator first becomes aware of the pollution. While we would hope remediation would be carried out quicker in practice, in law we must give the operator sufficient time to organise and undertake the task. Where the bathing water operator requests that the relevant local authority undertakes such measures on its behalf, the Regulations provide powers for the local authority to enter land as it sees fit in order to carry out this request.

3.2.114 If the bathing water operator fails to undertake the required remedial or restoration measures in the timeframe stated under the Regulations, then the Regulations empower the local authority to serve a 'Pollution Notice' on the operator. This would state the measures that the local authority believes should have been carried out by the operator to remedy or mitigate the impact of the pollution and requests that these must be either carried out within 14 days or a request made to the local authority to that effect. Failure to comply with the notice would lead to the local authority undertaking the necessary measures at the operator's expense. The Regulation requires that the local authority undertake such works at the end of the 14 day period following the serving of the notice.

**Q18 – We propose that the bathing water operator be responsible for organising remedial or restorative measures at the bathing water in terms of waste. Do you agree?**

3.2.115 The Regulations take account of existing legislation that deals with waste prevention and do not seek to duplicate their provisions. Waste deposited by marine vessels is effectively controlled through either the Merchant Shipping Act 1995<sup>28</sup>, if the waste is deposited within UK controlled waters, or if outwith, through the MARPOL Convention<sup>29</sup>, which is legally binding for all signatories, including the UK. The Maritime and Coastguard Agency are the responsible body in this respect<sup>30</sup> and these matters are reserved. For litter pollution from land, including from beach users themselves (around 30% of the total waste found on our shores according to Clean Coast Scotland)<sup>31</sup>, preventative legislative provisions already exist under the Environmental Protection Act 1990.<sup>32</sup>

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<sup>27</sup> Scottish Executive (2006) SE/2006/164

<sup>28</sup> Merchant Shipping Act 1995 (c21) [http://www.opsi.gov.uk/ACTS/acts1995/Ukpga\\_19950021\\_en\\_1.htm](http://www.opsi.gov.uk/ACTS/acts1995/Ukpga_19950021_en_1.htm)

<sup>29</sup> International Convention for the Prevention of Pollution from Ships (MARPOL Convention 1973) [http://www.imo.org/Conventions/contents.asp?doc\\_id=678&topic\\_id=258](http://www.imo.org/Conventions/contents.asp?doc_id=678&topic_id=258)

<sup>30</sup> <http://www.mcga.gov.uk/c4mca/mcga-environmental.htm>

<sup>31</sup> <http://www.keepsotlandbeautiful.org/index.asp?tm=23>

<sup>32</sup> Environmental Protection Act (c43) [http://www.opsi.gov.uk/acts/acts1990/Ukpga\\_19900043\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts1990/Ukpga_19900043_en_1.htm)

3.2.116 Local authorities and other public bodies, where the owner of a beach, already have a duty to keep the beach clear of litter under the 1990 Act. They also have powers to apply litter controls to private land. However, under the Litter Control Areas Order 1991<sup>33</sup>, this responsibility applies only above the mean High Water Springs and thus is not applicable to bathing waters, which commence below that mark. The frequency of cleaning beaches controlled by local authorities has also been established in the litter Code of Practice. For beaches adjacent to designated bathing waters, this must be undertaken every 48 hours during the bathing season. Our Regulations do not require remedial measures to be undertaken at such frequency: however, the provision is made for the bathing water operator and the local authority to enter into an agreement for the local authority to carry out cleansing operations at the bathing water at the same frequency and in the same way as it is required to do so under the 1990 Act.

### ***Beach cleaning proposals***

3.2.117 As well as the legal obligation placed upon bathing water operators to undertake appropriate remedial and restorative measures and the existing role on local authorities in terms of beaches under their control, we also stated in our strategy our intention to increase community involvement in keeping beaches and bathing waters clean.<sup>34</sup> We recognise the positive role that a local community can play in improving their bathing environment. On a national level, the Marine Conservation Society operate Adopt-a-beach, a successful beach clean and litter survey project which includes a number of Scottish bathing waters.<sup>35</sup> Keep Scotland Beautiful also run their annual National Spring Clean event, which has enabled community groups to tackle beaches in the past.<sup>36</sup> More locally, the GRAB Trust have been behind a number of initiatives to encourage community involvement with beaches and bathing waters within Argyll and Bute.<sup>37</sup>

3.2.118 We said in our strategy that we would explore the possibility of devising a scheme to encourage the involvement of local community groups, where resources were available. This would entail modest levels of funding in exchange for undertaking activities designed to improve the environment at their local bathing water, including reducing levels of litter. We have developed draft proposals for such a scheme in conjunction with Keep Scotland Beautiful, who we believe would be best suited to operating it.

**These are set out in Annex C and your views on whether this would be a suitable mechanism for encouraging local community involvement would be welcome.**

### **Regulation 17 – Relevant local authority duties**

3.2.119 Regulation 17 proposes that each relevant local authority identifies an official who has overall responsibility for their duties under this legislation. The benefit of this is that it will clarify the point of contact for Ministers, SEPA and other bodies with the local authorities and avoid some of the ambiguity that exists at present. It does not mean that local authorities need

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<sup>33</sup> SI 1991/1325 [http://www.uk-legislation.hmso.gov.uk/si/si1991/Uksi\\_19911325\\_en\\_1.htm](http://www.uk-legislation.hmso.gov.uk/si/si1991/Uksi_19911325_en_1.htm)

<sup>34</sup> Scottish Executive (2006) Paper 2006/6 op cit p14

<sup>35</sup> Marine Conservation Society Adopt-a-beach and Beachwatch in Scotland  
<http://www.mcsuk.org/mcsaction/scotland/adopt+a+beach+and+beachwatch+in+scotland>

<sup>36</sup> Keep Scotland Beautiful National Spring Clean  
<http://www.keepsotlandbeautiful.org/index.asp?tm=200&nid=108&cd=2007&cd1=9>

<sup>37</sup> Group for Recycling in Argyll and Bute Trust – Beaches and Marine Litter Project  
<http://www.grab.org.uk/marine.htm>

to recruit additional staff, as we would expect them to utilise existing officials where necessary. This provision will only have an impact when the other duties on local authorities commence, although we would propose bringing this requirement into force from 2008 in order to ensure local authorities are properly engaged in the process as and when functions fall to them.

3.2.120 Local authorities will have a number of duties placed upon them under the Regulations, both where they are the bathing water operator and as the relevant local authority. Public information provision and the various management measures where pollution is posing a health risk have been discussed above. Local authorities have also been given an enforcement role, including powers of entry, but the Regulations make clear that their costs in carrying out this role can be recovered from the bathing water operator.

### **Regulation 18 – Duty to notify interested parties**

3.2.121 Regulation 18 disapplies the requirements under Regulations 13, 14 and 15 for the operator or organisation that is aware of a potential health risk to bathers to have to notify the other parties of their finding, where they are of the reasonable belief that the other parties are already aware. The intention of this Regulation is to ensure that effort is not wasted ensuring others are informed of an incident that they are already knowledgeable of.

**Q19 – Do you agree with this proposal, or should the party that discovers the health risk ensure that the other parties are kept informed?**

### **Regulation 19 – Consultation and notification requirements**

3.2.122 Regulation 19 states that the duty on a local authority to consult under Regulations 13 to 16 is not invalidated where any person or organisation consulted fails to respond. This is important, as it allows management measures to be undertaken without having to unduly wait for comments, therefore saving unnecessary delay.

3.2.123 The Regulation also provides for the consultation period to be reduced or even dispensed with, where rapid action is of paramount importance in order to protect health, as long as those with an interest are informed of the reasons for doing so.

3.2.124 We propose that where the bathing water operator, former operator or person with proprietorial interest in the bathing water are unknown or cannot be found, then the authority proposing to undertake the management measure should make their intentions known through a public notice. This notice would be similar to existing public notices utilised by local authorities, and like these, would be made available both at the bathing water itself and in a local newspaper. It would indicate the bathing water affected and explain the intended management measure to be undertaken. To take account of the possibility of waste being deposited regularly at a bathing water throughout the season, we propose that at sites where management measures are required a single notice to cover the whole of the bathing season would suffice. This would prevent the use of unnecessary notices being issued for possibly foreseeable frequent events.

**Q20 - Do you agree with our proposals for notifying those with an interest of intended management measures. Should a single notice also apply in terms of macro-algae as well as for waste?**

## **Regulation 20 – Appeals**

3.2.125 It is important to allow any individual who feels aggrieved by obligations placed upon them under these Regulations by either SEPA or local authorities to be able to challenge these decisions through the law. We propose that under Regulation 20, aggrieved parties may appeal to the Sheriff where they are unhappy with SEPA’s determination of them as the bathing water operator; or where a notice in respect of providing signage is issued by the relevant local authority under Regulation 8; or where a pollution notice is issued under Regulation 16; or any actions of the relevant authority under Regulations 13 to 16.

## **Regulation 21 – Powers of entry – enforcement (*for local authorities*)**

3.2.126 Regulation 21 provides for powers of entry to land for a local authority or person authorised by the authority on its behalf. This is in response to situations where access to land, or the carrying out of actions on such land as part of a local authority’s duties under these Regulations is prevented. A Sheriff may authorise entry onto land by way of a warrant, if need be by force, in order for the local authority’s obligations to be met.

## **Regulation 22 – Recovery of expenses by the relevant local authority**

3.2.127 Regulation 22 establishes the right for the relevant local authority to recover any expense incurred from a current or former bathing water operator in respect of duties carried out under these Regulations. This relates specifically to duties it may undertake on behalf of the operator under Regulation 8 (provision of signage) and 16 (cleansing of waste). It also provides for the recovery of the costs associated with the issuing of a Notice or Pollution Notice and any work undertaken as a result. Our policy proposal will remove the risk of local authorities becoming encumbered with unnecessary costs for undertaking duties on behalf of others.

## **Regulation 23 - Where the relevant local authority is the bathing water operator**

3.2.128 In many cases the relevant local authority will also be the bathing water operator, and Regulation 22 sets out the duties set under the previous Regulations that would not apply in such cases. These relate to where local authorities would serve notice or undertake the work on behalf of the operator in terms of the provision of signage under Regulation 8 and waste removal under Regulation 16.

## **Regulation 24 – Rights of navigation and recreation etc**

3.2.129 Regulation 23 proposes that SEPA, relevant local authorities and bathing water operators must have regard to existing public rights under the guardianship of the Crown (who have proprietorial interest in the seabed and for a large proportion of the foreshore) when exercising any powers or complying with a duty under these Regulations. This would ensure that public rights of navigation or recreation are not impeded.

## **Regulation 25 – Revocation**

3.2.130 Regulation 25 revokes the current Bathing Water (Classification) (Scotland) Regulations 1991.

### 3.3 Summary of the roles and obligations under the Regulations

**SEPA** – Determine bathing water operator (Regulation 2); inform the public about list of bathing waters (Regulation 3); provision of information to Ministers and/or local authorities (Regulation 4); compile bathing water profiles (Regulation 6); determine monitoring point, establish monitoring calendar and undertake monitoring (Regulation 7); providing information for signage and providing signage for warning against short-term pollution, provide information on website and through other means (Regulation 8); undertake bathing water assessment (Regulation 9); classify bathing waters and provide permanent advice against bathing where necessary (Regulation 10); undertaking certain management measures at poor bathing waters (Regulation 11); undertaking certain management measures at bathing waters subject to short-term pollution (Regulation 12); undertaking certain management measures at bathing waters during abnormal situations and exceptional circumstances (Regulation 13); undertaking certain management measures at bathing waters affected by cyanobacterial pollution (Regulation 14); and undertaking certain management measures at bathing waters affected by macro-algae and marine phytoplankton proliferation (Regulation 15).

**Local authorities** – Provision of information to Ministers and/or local authorities (Regulation 4); ensuring warning signage is provided during short-term pollution events when there is no SEPA signage in situ (Regulation 8); undertaking certain management measures at bathing waters during abnormal situations and exceptional circumstances (Regulation 13); undertaking certain management measures at bathing waters affected by cyanobacterial pollution (Regulation 14); undertaking certain management measures at bathing waters affected by macro-algae and marine phytoplankton proliferation (Regulation 15); where the bathing water operator is unable or refuses to do so, undertake remedial or restoration work when a bathing water is affected by waste (Regulation 16); identify a relevant official who will have overall responsibility for bathing water duties (Regulation 17); powers of entry in order to undertake a bathing water operator's duties (Regulation 21); and recovery of expenses incurred undertaking a bathing water operator's duties (Regulation 22).

**Bathing Water operators** – Undertake monitoring (in conjunction with SEPA) for waste (Regulation 7); provide signage to inform bathers (Regulation 8); inform other parties where a cyanobacteria proliferation has occurred (Regulation 14); inform other parties where a macro-algae or marine phytoplankton proliferation has occurred (Regulation 15); and undertake remedial or restoration work when a bathing water is affected by waste (Regulation 16).

**Health boards** – Providing advice as to whether an incident is an abnormal situation or exceptional circumstance and advice on what remedial action should be taken (Regulation 13); providing advice as to whether a cyanobacteria proliferation is a risk to health and advice on what remedial action should be taken (Regulation 14); and providing advice as to whether a macro-algae or marine phytoplankton proliferation is a risk to health and advice on what remedial action should be taken (Regulation 15).

**Scottish Water** – Provision of information to Ministers and/or local authorities (Regulation 4); and providing timely advice as to whether an incident is an abnormal situation or exceptional circumstance and where it is what action to be undertaken (Regulation 13).

## **4. Meeting the water quality challenges - compliance through other means**

4.0.1 This marks the end of the consultation paper regarding the Regulations themselves. But as we said earlier in the paper, these Regulations transpose only certain parts of the Directive. Member States are required to ensure that by 2015 all bathing waters are of at least sufficient standard and while these Regulations (Regulation 10) set the appropriate standards, they do not establish the measures by which we hope this will be achieved. It is our intention that compliance will be attained through existing legislative and other means.

4.0.2 As was illustrated in Table 1 previously, compliance with the existing Directive is by no means guaranteed and with the tighter standards that the revised Directive brings, we are aware of the challenges ahead. Indeed, by comparing data from recent years against the revised Directive's criteria, SEPA has determined that up to one-third of currently designated bathing waters in Scotland could be at risk of being classified as poor where no discounting of samples occurs. Even allowing for the maximum number of disregarded samples, it is still possible that almost one in ten of Scotland's bathing waters would fail to reach *sufficient* standard. This is why it is important that we maximise the use of measures and mechanisms which are either already in place or are currently being developed to combat the risks to compliance. These are explained below. Fortunately, most bathing waters which currently meet the guideline standards of the existing Directive are expected to meet the criteria for classification as *excellent* under the revised Directive. SEPA has also predicted that a third of all current sites would achieve this highest classification were discounting to be applied.

### **4.1 Identifying risks to compliance**

4.1.1 Although required to identify the risks to compliance at bathing waters within the bathing water profile by 2011, SEPA will need to ensure that possible pollution impacts are taken account of earlier than this (and generally do already through their existing Pollution Reduction Plans). Under the Water Framework Directive, the issues affecting bathing waters, as protected areas, will need to be considered in the first River Basin Management Plan. This is due to be published in December 2009.

4.1.2 Risks to bathing waters can come from either point or diffuse sources, the latter exacerbated by heavy rain. Point source discharges, in that they come from an identifiable location, are generally easier to control than diffuse. With the improvements to the sewerage system, the impact of point source pollution has lessened, while that of diffuse pollution has become more apparent. Of the majority of Scottish bathing waters at risk of non-compliance with the revised Directive, most potential poor results would be attributable to diffuse pollution, particularly from agriculture, although intermittent sewage discharges after a period of heavy rain are also a factor.

### **4.2 Controlling point source pollution**

4.2.1 Point source discharges to the water environment are controlled through the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (CAR). These are the primary means by which activities that may influence water quality are now authorised. Bathing waters are recognised as protected areas under the CAR regime, and therefore SEPA will need to consider the risks to compliance when determining applications for authorisations of any point sources of pollution.

4.2.2 Included in the wide range of point sources which SEPA regulates are those discharges owned and operated by Scottish Water. In 2005, Scottish Ministers announced the objectives they require Scottish Water to meet in their current investment programme, Quality and Standards 3 (Q&S 3). This programme is running from 2006 to 2014, continuing the work of modernising and improving water and sewerage services in Scotland. Within those objectives, improvements to some 64 km of bathing waters to meet the microbiological standards of the current Directive were announced. Q&S 3 did not take account of the requirements of the revised Directive as the Directive did not come into force until 2006. It is important that the implications of the revised Directive for the water industry are properly considered, and where necessary, changes are made to Ministers' objectives for the second part of the Q&S 3 programme post-2010.

4.2.3 A significant threat to compliance at bathing waters in urban areas is from the impact of excess rainfall causing combined foul and surface water drainage sewers to overflow. Investment requirements arising from the revised Directive to mitigate the risk of overflow will be considered as one of the changes required to Ministers' Objectives for the second part of the Q&S 3 programme.

### 4.3 Controlling diffuse pollution

4.3.1 Diffuse pollution, by its very nature, is a difficult issue to deal with, but significant steps are already being taken across Scotland to address the problem. Under the Water Environment and Water Services (Scotland) Act 2003, General Binding Rules are planned on diffuse pollution from agriculture, to be introduced early in 2008. These will form part of the CAR regime and set out basic activities that should be undertaken in order to prevent pollution from occurring. The Scottish Government recently concluded its consultation on these proposals.<sup>38</sup> These General Binding Rules will be mainly drawn from existing guidelines, and so should prove to be a 'light touch' form of regulation, especially for those farmers who have already adopted this good practice. In addition, farmers will continue to be encouraged to adopt other good practice, as outlined in documents such as the 4 Point Plan<sup>39</sup>, the Farm Soils Plan<sup>40</sup> (both of which were published as a result of a project instigated by the Government to improve bathing water quality) and the Prevention of Environmental Pollution From Agricultural Activity (PEPFAA) Code.<sup>41</sup>

4.3.2 If the national GBRs prove to be insufficiently effective at reducing diffuse pollution at bathing waters, there is scope for further targeted and more specific rules. Measures may also be taken by requiring higher levels of authorisation under the CAR regime, such as licensing.

4.3.3 However, measures to reduce diffuse pollution will not just take the form of regulation. The Government's proposed Scottish Rural Development Programme, when finalised, should contain scope to encourage farmers to invest in measures designed to reduce diffuse pollution,

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<sup>38</sup> Scottish Government (2007) *Implementing the Water Environment and Water Services (Scotland) Act 2003: Diffuse Water Pollution from Rural Land Use: General Binding Rules and related provisions Consultation*  
<http://www.scotland.gov.uk/Publications/2007/09/05093837/0>

<sup>39</sup> Scottish Executive et al (2002) *The 4 Point Plan*  
<http://www.scotland.gov.uk/Publications/2002/11/15778/13464>

<sup>40</sup> Scottish Executive et al (2005) *Farm Soils Plan: Protecting soils and income in Scotland*  
<http://www.scotland.gov.uk/Publications/2005/12/01130314/03142>

<sup>41</sup> Scottish Executive (2005) *Prevention of Environmental Pollution From Agricultural Activity* and overview  
<http://www.scotland.gov.uk/Publications/2005/03/20613/51366>  
<http://www.scotland.gov.uk/Topics/Agriculture/Environment/PEPFAA/Intro>

particularly where this impacts on bathing waters. The results of recent Government farm-based research projects will be valuable here in informing us as to which measures will be most effective in improving bathing water quality.<sup>42</sup> They could include such options as the anaerobic digestion of slurry, as piloted in one such innovative project.<sup>43</sup> However, it is likely that the funds available for such schemes will be limited.

**Q: We believe that it makes more sense to use the outcomes of other processes, such as CAR licensing and Scottish Rural Development Programme, rather than specify additional measures in the draft Regulations to protect bathing waters. Do you agree with this approach?**

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<sup>42</sup> Scottish Government bathing water research projects

<http://www.scotland.gov.uk/Topics/Environment/Water/bathingwaters/BathingWaterResearch>

<sup>43</sup> Scottish Government anaerobic digestion and aerobic composting project (including final report)

<http://www.scotland.gov.uk/Topics/Environment/Water/bathingwaters/Biogasandcomposting>

## **5. Conclusion**

5.1 The revised Directive offers a significant challenge to protect and improve Scotland's bathing waters, but one that will deliver real benefits, not only to the health of bathers, but to everyone who enjoys a clean environment.

5.2 The Regulations set out how we propose to transpose the Directive – meeting the requirements to improve public information and boost participation. They establish an appropriate framework for the future management of this valuable resource, and set out the criteria by how our actions to improve our waters' quality will be judged. The Regulations value the importance of partnership working – between SEPA, local authorities and bathing water operators – in delivering the Directive's requirements. We also believe they provide for the public and stakeholders to be engaged in the process and to be kept informed. This consultation is part of that process. You are invited to comment on the issues relating to the draft Regulations.

5.3 Scotland's bathing waters have improved, but there are still threats to good water quality, as was witnessed in our most recent season's results. We cannot afford complacency if we are to meet the revised Directive's tighter standards. We will ensure that use is made of appropriate measures to attain compliance.

**2008 No.**

**ENVIRONMENTAL PROTECTION**

**WATER**

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

*Made* - - - - - 2008

*Laid before the Scottish Parliament* 2008

*Coming into force in accordance with Regulation 1(2) to (5)*

The Scottish Ministers, make the following regulations in exercise of the powers conferred by sections 7, 8, 9 and 36 of the Water Environment and Water Services (Scotland) Act 2003, section 2(2) of the European Communities Act 1972 and all other powers enabling them to do so:

**PART 1**

**GENERAL PROVISIONS**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Bathing Water (Scotland) Regulations 2008 and come into force in accordance with paragraphs (2) to (5).

(2) Part 1, regulation 17, regulation 25(1)(a) and paragraph 2(1)(a) of Schedule 2 and regulation 7 in so far as it relates to that paragraph, come into force on 24<sup>th</sup> March 2008.

(3) Parts 2, 3, 5 and the remainder of part 6 come into force on 24<sup>th</sup> March 2011.

(4) Part 4, regulations 9(1)(a) and 9(2) come into force on 24<sup>th</sup> March 2012.

(5) The remainder of these regulations come into force on 1<sup>st</sup> 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 four 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<sup>(44)</sup> of the European Parliament and the Council concerning the management of bathing water and repealing Directive 1976/160/EEC<sup>(45)</sup>;

“bathing water operator” – means the person in control of the solum of the bathing water, except where the bathing water is tidal; where it means the person in control of the land immediately adjacent to the bathing water upon which in the opinion of SEPA the main facilities, infrastructure or measures to promote bathing are situated; or where no such facilities, infrastructure or measures are situated on such land, the land through which in the opinion of SEPA the majority of bathers ordinarily access the bathing water;

“bathing water profile” – means the profile established under regulation 6;

“bathing water quality assessment” – means the assessment carried out by SEPA under regulation 9.

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

“exceptional circumstance” – means an incident at a bathing water that is unexpected, and has, or could reasonably be expected to have, an adverse impact on bathing water quality and on bathers’ health;

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

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

“relevant authorities” – means any Local Authority constituted under the Local Government etc. (Scotland) Act 1994, and any operator of a public or private sewage treatment works as defined in the Water (Scotland) Act 1968.

“relevant local authority” – means the local authority with responsibility for the area where the bathing water is situated as defined under the Local Government etc. (Scotland) Act 1994.

“relevant health board” – means the health board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978<sup>(46)</sup> with responsibility for the area where the bathing water is situated;

“Scottish Water” means the body corporate established under section 20 of the Water Industry (Scotland) Act 2002<sup>(47)</sup>;

“SEPA” means the Scottish Environment Protection Agency;

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

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

“short term pollution” – means 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; and

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<sup>44</sup> O.J. No. L 64, 4.3.2006, p. 37

<sup>45</sup> O.J. No. L 31, 5.2.1976, p.1

<sup>46</sup> c.29; Section 2 was amended by the Health and Social Services and Social Security Adjudications Act 1983, Schedule 7, paragraph 1 and by the 1990 Act, section 28, and Schedule 9, paragraph 19.

<sup>47</sup> asp. 3

“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 Mean High Water Spring (MHWS) Tide mark;

### **Designation of bathing waters and determination of bathing season**

3.—(1) Subject to (2) 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—

- (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, infrastructure or facilities provided, or other measures taken, to promote bathing; and
  - (ii) permanent advice against bathing there has not been introduced;
- (b) determine for each bathing water the period during which large number of bathers are expected there as the bathing season.

(3) Paragraph (2)(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 form an artificially created body but do not constitute surface water or groundwater.

(4) Before the start of the first bathing season in each calendar year, SEPA and the Scottish Ministers must publish the full list of bathing waters on their websites, (and in any other manner that they consider appropriate for the purpose of bringing it to the attention of persons likely to be affected); and the Scottish Ministers must make notification of such publication in the Edinburgh Gazette.

(5) Where the circumstances referred to in paragraph (6) occur the Scottish Ministers must advise bathing water operators and the relevant authorities, as to the extent of designation and season relative to the bathing water connected to that operator and authority at least 56 days before publication under (4).

(6) The circumstances referred to in paragraph (5) are:-

- (a) where an area of surface water is designated as a bathing water for the first time under these regulations;
- (b) where a former bathing water, which ceased to be designated through its failure to meet the criteria set out in sub sub-paragraph 2(a)(i), is designated as a bathing water for the first time after it ceased to be designated.
- (c) where 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; and,

(5) (d) in respect of the duration of a bathing season only, where an alteration is made to the duration of the bathing season at a designated bathing water.

### **General duties**

4.—(1) SEPA and the relevant authorities must promptly provide—

- (a) to the Scottish Ministers such information about the quality of bathing waters as the Scottish Ministers may by written notice reasonably require; and
- (b) where the relevant authority is not a local authority such information to a local authority about the quality of the bathing waters in its area as the local authority may by notice reasonably require.

### **Public participation**

5.—(1) The Scottish Ministers must ensure that the public is given early and effective opportunities to participate in the establishment, review or revision of a bathing water or bathing season, in accordance with paragraphs (2) and (3) below.

(2) The Scottish Ministers must-

(a) ensure that the public is informed about any proposals for the establishment, review or revision of a bathing water or season;

(b) ensure that information about the proposals referred to in sub paragraph (a) above is made available to the public, including information about the right to participate in decision making in relation to those proposals;

(c) ensure that the public is entitled to make comments before any decision is made on the establishment, review or revision of a bathing water or season;

(d) in making any such decision, take due account of the results of the public participation; and

(e) having examined the comments made and opinions expressed by the public, make reasonable efforts to inform the public about-

(i) the decisions taken and the reasons and considerations on which those decisions are based; and

(ii) the public participation process.

(3) The Scottish Ministers must publish any information required to carry out their functions under paragraphs (1) and (2) above in such manner as they consider appropriate for the purpose of bringing it to the attention of the public 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 public participation 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 such comments may be submitted.

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

## PART 2

### BATHING WATER PROFILES

#### **Bathing water profiles**

6.—(1) SEPA must establish and keep under review a bathing water profile for every bathing water in accordance with Schedule 1.

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

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

(a) the Bathing Waters (Classification) (Scotland) Regulations 1991<sup>(48)</sup>

(b) the Environment Act 1995<sup>(49)</sup>;

(c) the Water Environment and Water Services (Scotland) Act 2003<sup>(50)</sup>;

(d) the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003<sup>(51)</sup>; and

(e) the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004<sup>(52)</sup>.

## PART 3

### MONITORING OF BATHING WATERS

#### **Monitoring**

7.—(1) SEPA must monitor and carry out investigations at bathing waters in accordance with this regulation.

(2) Monitoring for—

(a) Intestinal enterococci and *Escherichia coli* must be carried out in accordance with Part 1 of Schedule 2;

(b) cyanobacteria must be carried out in accordance with Part 2 of Schedule 2; and

(c) other pollution which takes the form of tarry residues, glass, plastic, rubber or any waste must be carried out in accordance with Part 3 of Schedule 2.

(3) Investigation of macro-algae and marine phytoplankton proliferation must be carried out in accordance with Part 4 of Schedule 2;

(4) The bathing water operator must also monitor in accordance with Part 3 of Schedule 2.

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<sup>48</sup> S.I. 1991/1609

<sup>49</sup> 1995 c.....

<sup>50</sup> 2003 asp. 3. (as amended.....)

<sup>51</sup> S.I. 2003/3245.

<sup>52</sup> S.I. 2004/99

## PUBLIC INFORMATION

### Public information

8.—(1) Every bathing water operator must ensure that the following information about its bathing water is available 28 days prior to and during the bathing season on a sign in the vicinity of the bathing water, in a place easily accessible to the public:—

- (a) the bathing water's current classification pursuant to regulation 10 (except where the provisions of regulation 11(3) apply);
  - (b) whether a bathing prohibition has been imposed 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) an indication of such; and
    - (ii) an indication of the number of days for which advice against bathing was introduced or a prohibition on bathing was imposed during the immediately preceding bathing season because of short-term pollution;
  - (e) where a bathing prohibition has been introduced for whatever reason, (and SEPA have advised the bathing water operator of this)—
    - (i) an indication of such prohibition,
    - (ii) the reasons for such and its cause, and
    - (iii) the management measures being undertaken to prevent, reduce, or eliminate the causes of pollution that have led to the prohibition; and
  - (f) an indication of the sources of more complete information published in accordance with paragraph (7).
- (2) The sign referred to in paragraph (1) must be designed in such a way so as to allow the additional SEPA information defined in paragraph (4) to be affixed to it.
- (3) SEPA must ensure that the additional SEPA information is notified to the relevant local authority as soon as possible upon SEPA becoming aware of such.
- (4) The additional SEPA information is:-
- (a) whether any advice against bathing there has been introduced;
  - (b) a warning whenever short-term pollution is predicted by SEPA;
  - (c) a warning that the bathing water is affected by an incident of short term pollution, (unless such notification is already made available through a SEPA controlled sign at the bathing water);
  - (d) that an abnormal situation has occurred together with information as to its nature and expected duration; and
  - (e) where advice regarding short term pollution has been issued, or advice against bathing has been introduced for whatever reason:-
    - (i) an indication of such advice,
    - (ii) the reasons for such and its cause, and
    - (iii) the management measures being undertaken to prevent, reduce, or eliminate the causes of pollution;

- (5) The relevant local authority must ensure that the additional SEPA information is displayed at the sign referred to in (1) as soon as possible upon becoming aware of that information.
- (6) The obligations upon the relevant local authority in paragraph (5) do not apply in so far as the additional SEPA information is already displayed on a SEPA controlled sign at the bathing water
- (7) SEPA must, in relation to each bathing water, publish the following information on its website—
- (a) the information referred to in paragraph (1);
  - (b) the information referred to in paragraph (4);
  - (c) the information referred to in paragraph (8);
  - (d) before the start of every bathing season, the bathing water’s classification in accordance with regulation 10 over the last three years;
  - (e) the current bathing water profile;
  - (f) as soon as possible after the completion of the analysis under Schedule 2, the results of the monitoring carried out in accordance with regulation 7 since the beginning of the current bathing season;
  - (g) where its bathing water profile indicates that the bathing water is likely to be affected by incidents of short-term pollution, general information on—
    - (i) the conditions likely to cause short-term pollution;
    - (ii) the likelihood of short-pollution and its possible duration; and
    - (iii) the causes of short-term pollution and management measures taken with respect to it; and
  - (h) where the bathing water is classified as “poor” under regulation 10, information as to—
    - (i) the causes of pollution there; and
    - (ii) the management measures being taken there under regulation 11.
- (8) Where permanent advice against bathing has been issued in relation to a bathing water (and has not been withdrawn) that water shall be a former bathing water and the person who controls a former bathing water (the ‘former bathing water controller’) must ensure that, the following information is available in an easily accessible place in the vicinity of the former bathing water, during those parts of the year which formerly constituted the bathing season—
- (a) the former bathing water is no longer a bathing water;
  - (b) an indication that permanent advice against bathing has been issued; and
  - (c) the reasons for this.
- (9) In addition to SEPA’s obligations under regulations 11-16, SEPA must ensure that it provides all information referred to in paragraphs (1), (4) or (8) to the bathing water operator or the former bathing water controller as soon as it becomes aware of such.
- (10) SEPA may make use of such additional media as appropriate to publicise all or part of the information referred to in paragraph (2).
- (11) Public information under these Regulations must—
- (a) wherever possible, be provided using maps;
  - (b) be presented in a clear and coherent manner; and

(c) with regard to the information required in paragraph (7)(d) to (h), be in such languages in addition to English, as are appropriate having regard to the location of the bathing water and ease of public understanding.

(12) In complying with this regulation no person is under any obligation to provide such information which has not yet become available by virtue of the date of commencement of any of these regulations.

(13) In complying with its obligations under paragraphs (1) or (8) the bathing water operator or the former bathing water controller (as the case may be) may request that they be carried out by the Relevant Local Authority; such a request constitutes consent for the Relevant Local Authority to enter onto land controlled by the bathing water operator or the former bathing water controller and carry out such works as it deems necessary to constitute compliance by the bathing water operator or the former bathing water controller with such obligations.

(14) Upon receipt of a request under paragraph (13) and the information that was provided to the bathing water operator or the former bathing water controller under paragraph (9); a Relevant Local Authority must carry out such works which in its opinion satisfies the obligations.

(15) If any of the obligations specified in paragraphs (1) or (8) are not executed 28 days prior to the commencement of the bathing season or, if the display of any information in compliance with those obligations is not maintained during the bathing season, the Relevant Local Authority must serve a notice (a 'Local Authority Notice') upon that operator or controller, which states:—

- (a) the obligations, or parts thereof that have not been carried out;
- (b) that those obligations or parts thereof must be carried out within 14 days of the date of service of the Local Authority Notice;
- (c) that failure to carry out such obligations within 14 days will result in the Relevant Local Authority entering onto such land controlled by the bathing water operator or former bathing water controller as is necessary and carrying them out, and
- (d) that the expenses reasonably incurred in doing so will be recoverable by the Relevant Local Authority from the Bathing water operator or former bathing water controller.

(16) Upon the expiry of 14 days (or as near as possible to such a date), after the date of service of the Local Authority Notice the Relevant Local Authority must carry out such works which in its opinion satisfies the obligations imposed upon the bathing water operator or former bathing water controller under paragraphs (1) or (8); in doing so the Relevant Local Authority may enter onto land controlled by the bathing water operator or former bathing water controller and carry out such activities as it thinks fit.

## PART 4

## BATHING WATER ASSESSMENT AND CLASSIFICATION

### Assessment

- 9.—(1) At the end of every bathing season, for every bathing water, SEPA must—
- (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 the relevant assessment period.
- (2) In this regulation, “a set of bathing water quality data for that season” comprises of samples collected in compliance with regulation 7(2)(a), which number at least:-
- (a) 4 samples, where that bathing season is in excess of 8 weeks,
  - (b) 3 samples , where:-
    - (i) the bathing season does not exceed 8 weeks, or
    - (ii) a bathing water is situated in a region subject to special geographical constraints
- (3) In this regulation, the “relevant assessment period” is—
- (a) the immediately preceding four bathing seasons;
  - (b) where SEPA so decides in accordance with paragraph (5); the immediately preceding four bathing seasons excepting the most recent season; or
  - (c) where SEPA so decides in accordance with paragraph (6) the number of immediately preceding bathing seasons, being less than four, that SEPA may determine in accordance with paragraphs (7) (8) or (9) as the case may be.
- (4) In this regulation the “set of bathing water quality data compiled in relation to the relevant assessment period” comprises of at least—
- (a) 16 samples, where the bathing season is in excess of 8 weeks,
  - (b) 12 samples where a bathing water is situated in a region subject to special geographical constraints; or,
  - (c) 8 samples, where the bathing season does not exceed 8 weeks.
- (5) SEPA may make a decision under paragraph (3)(b) where—
- (a) it has consulted the Scottish Ministers; and
  - (b) it is at least five years since the last change in the relevant assessment period.
- (6) SEPA may make a decision under paragraph (3)(c)—
- (a) where it has consulted the Scottish Ministers; and
  - (b) where—
    - (i) the Scottish Ministers designated the bathing water under regulation 3 less than four bathing seasons ago and it was not also a designated bathing water under the Bathing Waters (Classification) (Scotland) Regulations 1991 (the 1991 regulations) on 23 April 2014;
    - (ii) SEPA considers that changes have occurred that are likely to affect the classification of the bathing water under regulation 10; or,
    - (iii) the bathing water had already been assessed under the 1991 regulations;
- (7) In the case of paragraph (6)(b)(i) the number of preceding season is the number of seasons since the bathing water was designated.

(8) In the case of paragraph (6)(b)(ii) the number of preceding seasons is limited to those where the water quality data was all collected after the changes referred to in that paragraph occurred.

(9) In the case of paragraph (6)(b)(iii) the number of preceding bathing seasons in terms of these regulations is those seasons since the commencement of monitoring and assessment; however in addition to such; SEPA will make use of those samples collected under the faecal coliform parameters in schedule 3 of the 1991 regulations for those years prior to such commencement as are necessary to provide samples which cover a continuous 4 year period; such samples collected under the 1991 regulations will be assessed in terms of the parameters set out in the tables in Schedule 3 of these regulations.

(10) The Scottish Ministers may after consulting with SEPA—

(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 the light of those assessments where those bathing waters—

(i) are contiguous;

(ii) have received similar such assessments for the preceding four years; and

(iii) have bathing water profiles which identify a common pollution risk profile.

### **Classification**

**10.**—(1) At the end of every bathing season, on the basis of the assessment made under regulation 9, SEPA must classify every bathing water as “poor”, “sufficient”, “good” or “excellent” in accordance with Schedule 3.

(2) SEPA must issue permanent advice against bathing at a bathing water (which advice must 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 the relevant authorities, Scottish Water and the Scottish Ministers) it considers that the achievement of a “sufficient” quality classification at that bathing water would be infeasible or disproportionately expensive.

(3) SEPA may withdraw permanent advice against bathing at a former bathing water if the quality of the water is such that if it were a bathing water, it would be classified as “sufficient”, “good” or “excellent” in accordance with Schedule 3, and in those circumstances SEPA shall advise the Scottish Ministers and the former bathing water controller that it has withdrawn its permanent advice against bathing.

## **PART 5**

### **MANAGEMENT OF BATHING WATERS**

#### **Management Measures for “poor” bathing waters**

**11.**—(1) This regulation applies where SEPA classifies a bathing water as “poor” under Regulation 10.

(2) SEPA must advise the Scottish Ministers of the classification.

(3) Where a SEPA controlled sign is situated at the bathing water SEPA must update that SEPA controlled sign so that it displays that the bathing water has been classified as poor.

(4) Subject to paragraph (5) SEPA must take such management measures as it considers necessary, whether in relation to the regulation of controlled activities or some other form of management of the environment to ensure that the bathing water can be classified as sufficient, good or excellent.

(5) SEPA shall not be bound under paragraph (4) to achieve sufficient, good, or excellent classification for a bathing water if permanent advice against bathing has been issued under regulation 10(2) with regard to that bathing water.

#### **Management Measures at bathing waters subject to short term pollution**

**12.**—(1) Where short term pollution is predicted, or present at a bathing water, then as soon as it becomes aware of such, SEPA must advise the bathing water operator and the reasons for such.

(2) In addition to its obligations under paragraph (1) SEPA must take such action as it considers necessary, whether in relation to the regulation of controlled activities or some other form of management of the environment to ensure that the short term pollution is prevented reduced or eliminated.

(3) SEPA shall advise the bathing water operator of the action taken or to be taken by them under paragraph (2).

#### **Management Measures at bathing waters in abnormal situations and exceptional circumstances**

**13.**—(1) Where, in the opinion of SEPA, the Relevant Local Authority, or a bathing water operator, (collectively the ‘interested parties’), an abnormal situation, or an exceptional circumstance occurs; each of the interested parties must notify the other interested parties and, where appropriate the health board and Scottish Water.

(2) Upon being notified or notifying under regulation 13(1), SEPA will advise; the Scottish Ministers, and the person with proprietorial interest in the bathing water of the notification.

(3) SEPA and the Relevant Local Authority must determine jointly whether an abnormal situation, or an exceptional circumstance has occurred, and in doing so may consult and take evidence from the health board, Scottish Water and such persons as they think fit; in case of disagreement the determination of SEPA is final.

(4) Upon a determination that an abnormal situation, or an exceptional circumstance has occurred, the relevant local authority;

(a) must promptly update the sign erected by the bathing water operator under regulation 8 and erect further signs (and thereafter maintain them) for the duration of such an incident in such areas of the bathing water as are necessary to advise bathers of such and against bathing;

(b) must immediately consult with the other of the interested parties, the Scottish Ministers, the person with proprietorial interest in the bathing water and such other

persons as it thinks fit upon whether to take action, and what action to take to remove or reduce the risk to bathers health having regard to:

- (i) the likely duration of the event or incident;
- (ii) the present and continuing efficacy of the signs erected under (a) in deterring bathing.

(c) may, after consulting as per the provisions of subparagraph (4)(b) take such action as is reasonably necessary to reduce the risk to bathers health, including entering onto such land and removing materials as it thinks fit;

(d) may arrange for the measures referred to in subparagraphs (a) and (c) to be undertaken on its behalf.

### **Management Measures at bathing waters affected by Cyanobacterial Proliferation**

**14.—**(1) Where SEPA, a relevant local authority or a bathing water operator (collectively the ‘interested parties’) is aware of a cyanobacterial proliferation which would reasonably be considered to pose a risk to bather’s health, each of the interested parties must notify the other interested parties and the health board.

(2) Upon becoming aware of a cyanobacterial proliferation which would reasonably be considered to pose a risk to bather’s health, the relevant local authority must:—

(a) promptly update the sign erected by the bathing water operator under regulation 8 and erect further signs (and thereafter maintain them) all for the duration of the a cyanobacterial proliferation in the areas of the bathing water as are necessary to advise bathers of the presence of the proliferation and against bathing; and

(b) thereafter consult with the other of the interested parties, the Health Board the Scottish Ministers, and the person with proprietorial interest in the bathing water upon whether to take action and what action to take to remove or reduce the cyanobacterial proliferation having regard to:

- (i) the likely duration of the cyanobacterial proliferation;
- (ii) the extent of the cyanobacterial proliferation and the likelihood of the cyanobacterial proliferation to increase; and
- (iii) the present and continuing efficacy of the signs erected under sub-subparagraph (i) in deterring bathing.

(3) The relevant local authority may:—

(a) after consulting in accordance with subparagraph (2)(b) and having regard to the views expressed, take such action to remove or reduce such cyanobacterial proliferation (including the removal of materials) as is reasonably necessary to remedy or mitigate the risk to bather’s health;

(b) enter onto land as necessary in the discharge of its duties under subparagraph 2(a),

(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 paragraph 3(a),

(d) arrange for the undertaking on its behalf of the measures referred to subparagraphs (2)(a) and (3)(a).

### **Management Measures at bathing waters affected by Macro-Algae and Marine Phytoplankton proliferation**

**15.**—(1) Where in the opinion of SEPA, the relevant Local Authority, or a bathing water operator (collectively the ‘interested parties’) a proliferation of macro-algae or marine phytoplankton occurs which poses a health risk to bathers or is unacceptable, then each of the interested parties must notify the other interested parties and the health board.

(2) The interested parties must jointly determine with reference to the criteria specified in (3) whether the proliferation of macro algae or marine phytoplankton is a health risk or is unacceptable; in case of disagreement the determination of SEPA is final.

(3) In determining whether the proliferation:

(a) poses a health risk, the interested parties must have regard to the views of the health board and in the main to the risk to bathers health due to the threat of disease, but may, where they perceive the risk to be significant, take into account the risk of direct physical injury to bathers;

(b) is unacceptable, the interested parties must have regard to:

- (i) whether the extent or volume of the proliferation is unusual;
- (ii) whether the proliferation is unsightly;
- (iii) any effluence or effluvia arising from the proliferation;
- (iv) the impact upon the ecosystem of that bathing water which would result from the removal of the proliferation; and
- (v) the amount of waste or litter which is contained in the proliferation.

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

(a) promptly update the sign erected by the bathing water operator under regulation 8 and erect further signs (and thereafter maintain them) all for the duration of such a proliferation in such areas of the bathing water as are necessary to advise bathers of the presence of the proliferation, and in case of health risk, against bathing; and

(b) thereafter consult with the other interested parties, the Scottish Ministers, and the person with proprietorial interest in the bathing water upon 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 the proliferation to increase; and
- (iii) in case of a health risk, the present and continuing efficacy of the signs erected under subparagraph (a) in deterring bathing

(5) The relevant local authority may;

- (a) enter onto land as necessary in the discharge of its duties under subparagraph (4)(a);
- (b) after consulting as per the provisions of subparagraph (4)(b) and having regard to the views expressed take such action (including the removal of materials) to remove or reduce such a proliferation as is reasonably necessary to remedy or mitigate the risk to bather's 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 subparagraph (5)(b),
- (d) arrange for the undertaking on its behalf of the measures referred to in subparagraphs (4)(a) and (5)(b).

(6) A determination under paragraph (2) that a proliferation is a health risk, together with relevant local authority's discharge of its obligations under this regulation relieves that authority of its obligations with regard to determining whether that proliferation is unacceptable.

**Management Measures at bathing waters affected by Pollution (such as tarry residues, glass, plastic, rubber or any other waste)**

**16.—**(1) This regulation applies where SEPA, the Relevant Local Authority, or the bathing water operator (collectively 'the interested parties') is aware of pollution which;

- (a) takes the form of tarry residues, glass, plastic, rubber or any waste,
- (b) is of an amount so as to require remedial and restorative measures to be undertaken to the bathing water; and
- (c) is not already covered by the operation of the Merchant Shipping Act 1995,

(2) Each of the interested parties must notify the other interested parties, the Scottish Ministers, and the person with proprietorial interest in the bathing water.

(3) Within 14 days of becoming aware of pollution as defined in regulation 16(1) the bathing water operator must:—

- (a) take such remedial or restorative measures (which may include the provision of information to the public) as are necessary in order to remedy or mitigate the effect of such; or
- (b) make a request to the Relevant Local Authority in terms of regulation 16(4).

(4) In complying with its obligations under paragraph (3) the bathing water operator may:—

- (a) enter onto and carry out such works on the foreshore in order to comply with its obligations under paragraph (2).

(b) request that the necessary remedial or restorative measures be carried out by the Relevant Local Authority.

(5) Upon receipt of a request under paragraph (3) a Relevant Local Authority must carry out remedial and restorative measures which in its opinion satisfies the obligations incumbent on the bathing water operator; such a request will:—

- (a) permit the Relevant Local Authority to enter onto the foreshore, and
- (b) constitute consent for the Relevant Local Authority to enter onto land controlled by the bathing water operator.

(6) If the bathing water operator fails to comply with regulation 16(3) the Relevant Local Authority must serve a notice (a ‘Pollution Notice’) upon the bathing water operator, which states:—

- (a) the measures which are necessary in the opinion of the Relevant Local Authority in order to remedy or mitigate the effects of the pollution that have not been carried out;
- (b) that no request has been received by the Relevant Local Authority in terms of regulation 16(4)
- (c) that the necessary remedial or restorative measures must be carried out, or a request for them to be carried out by the Relevant Local Authority must be received by that Authority; within 14 days of the date of service of the Pollution Notice;
- (d) that failure to comply with the terms of the notice that are set out due to subparagraph (6)(c) will result in the Relevant Local Authority entering onto such land controlled by the bathing water operator as is necessary and carrying out the measures, and
- (e) that the expenses reasonably incurred by the relevant local authority in carrying out the works in accordance with the terms of the notice that are set out due to paragraph 5(d), (and incurred in the preparation and service of this notice) are recoverable by the Relevant Local Authority from the bathing water operator.

(7) Upon expiry of 14 days after date of service of the Pollution Notice (or as near as possible after such a date) the Relevant Local Authority must carry out such remedial and restorative measures which in its opinion satisfies the obligations incumbent on the bathing water operator; in doing so the Relevant Local Authority may enter onto the foreshore and onto land controlled by the bathing water operator and carry out such activities as it thinks fit.

(8) In assessing the amount of pollution that requires such remedial and restorative measures, under regulation 16(1)(b) the interested parties must have regard to guidance issued by the Scottish Ministers.

(9) In determining what actions are necessary under regulation 16(3) and regulation 16(6)(b) the bathing water operator and the Relevant Local Authority must have regard to guidance issued by the Scottish Ministers.

(10) The relevant Local authority and the bathing water operator may enter into an agreement for the relevant local authority to enter onto the bathing water and carry out operations for the clearing of litter and refuse there in the same way and at the same frequency as it is obliged to in terms of section 89 of the Environmental Protection Act 1990<sup>(53)</sup> for the relevant land

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<sup>53</sup> c. 43 section 89 was amended by.....

immediately adjoining the bathing water, or it would be obliged to if the land adjoining the bathing water were relevant land.

(11) Compliance with an agreement of the type referred to under paragraph (10) shall relieve the bathing water operator of its obligations under Regulation 16(3).

## **Part 6**

### **General Provisions**

#### **Relevant Local Authority Duties**

**17.**— The proper officer of the relevant local authority shall co-ordinate the discharge of the functions of the relevant local authority under these regulations; where proper officer means an officer appointed for that purpose by the authority.

#### **Duty to notify interested parties**

**18.**— The duty to notify the interested parties in regulations 13(1), 14(1), 15(1) and 16(1), and the Health Board in 13(1), 14(1) and 15(1) does not apply where the notifying party is of the reasonable belief that the party to be notified is already aware of the matter which would be notified.

#### **Consultation and Notification Requirements**

**19.**—(1) Any failure of a person or body consulted by any person in compliance with the provisions of regulations 13 to 16 to respond, does not invalidate the consultation carried out.

(2) Any notification or consultation period may be reduced or dispensed with in relation to the taking of necessary action by SEPA or a relevant authority for the protection of human health; provided that the party taking such action takes steps to notify such landowner, bathing water operator or former bathing water controller as soon as practicable after the action taken.

(3) If the identity of:

- (a) the bathing water operator;
- (b) the former bathing water operator;
- (c) any person with proprietorial interest in the bathing water;

is unknown or they cannot be found after reasonable enquiry, then the provisions of paragraphs (4) to (7) apply.

(4) Any requirement to consult with, or notify, (as the case may be) the persons referred to in paragraph (3) are held to have been discharged through a public notice which will indicate the bathing water affected, and the type of management measure which may be carried out there; such a notice must be placed in a newspaper circulating in the area where the bathing water is situated and displayed in a prominent place at the bathing water.

(5) The fact that the first available publication date of the notice in a newspaper takes place after the date when the action consulted upon or notified of takes place shall not invalidate such consultation or notification, provided:-

- (a) the notice was displayed in a place at the bathing water prior to action taking place; and,
- (b) the taking of the action prior to such a date of publication was necessary to protect public health.

(6) Should management measures be required under regulation 16 then the duty to notify the bathing water operator in accordance with the provisions of paragraph (4) shall be discharged through a single public notice which shall cover the duration of the bathing season.

(7) In the case of the bathing water operator or the former bathing water controller, the relevant local authority must discharge the duties that would have been incumbent upon such persons.

### **Appeals**

**20.**—(1) Any person may appeal to the Sheriff if they are aggrieved by;—

- (a) SEPA's opinion in regulation 2 on the land:-
  - (i) upon which the main facilities, infrastructure or measures are situated,
  - (ii) through which the majority of bathers ordinarily enter the bathing water;
- (b) a Local Authority Notice under regulation 8;
- (c) any actions of a relevant local authority under Regulations 13 to 16; or
- (d) a Pollution Notice under regulation 16.

(2) Any appeal under paragraph (1) is by way of summary application.

### **Powers of Entry – Enforcement**

**21.**—(1) If a relevant local authority is prevented from entering onto any land, from carrying out any actions on such land or entry or actions to be carried out on its behalf is prevented, when acting in compliance with these regulations; the Sheriff may by warrant authorise the local authority or authorised person to enter onto such land, if need be by force, and carry out such actions as it requires under these regulations.

(2) A warrant issued in pursuance of paragraph (1) shall continue in force until the purpose for which the entry is required has been satisfied.

### **Recovery of Expenses by the Relevant Local Authority**

**22.**—(1) Any expense reasonably incurred by the Relevant Local Authority is recoverable from the former bathing water operator or the bathing water operator (as the case may be) by the Relevant Local Authority, if it has carried out works in compliance with:—

- (a) with a request by a former bathing water operator under regulation 8(13);
- (b) with a request by a bathing water operator under regulations 8(13) or 16(3);
- (c) an agreement entered into between the relevant local authority and a bathing water operator of the type referred to in regulation 16(10); or,

(d) in pursuance of a Local Authority Notice, or a Pollution Notice.

(2) In carrying out works in pursuance of a Local Authority Notice or a Pollution Notice, a Relevant Local Authority may include in its recoverable expenses under paragraph (1); the cost of the preparation and service of such a notice, which may include a reasonable estimate of:

- (a) its administrative costs and
- (b) the monetary value of its staff time.

### **Where the Relevant Local Authority is the Bathing Water Operator**

**23.**—In any case where the bathing water operator is the same person as the relevant local authority, the relevant local authority is bound to comply with these regulations in the same way as any bathing water operator, however in that instance the following regulations do not apply to the Relevant Local Authority—

- (a) 8(13) to 8(16);
- (b) 16(3)(b);
- (c) 16(4)(b); and
- (d) 16(5) to 16(7)

### **Rights of Navigation and Recreation etc.**

**24.**—In exercising any powers or rights, or complying with any duties or responsibilities under these regulations; SEPA, the Relevant Local authorities and the bathing water operators must have regard to the need to protect and maintain any public rights under the guardianship of the Crown to use the foreshore and adjacent waters or the bed thereof.

## **PART 7**

### **REVOCATIONS AND MODIFICATIONS**

**25.**—(1) In Part 2 of Schedule 4 to the Water Environment (Controlled Activities)(Scotland) Regulations:-

(a) insert “The Bathing Waters (Scotland) Regulations 2008” immediately after the entry relating to the Control of Pollution (Silage Slurry and Agricultural Fuel Oil) (Scotland) Regulations 1991;

(b) delete the words “The Bathing Waters (Classification) (Scotland) Regulations 1999”.

**26.**—The Bathing Waters (Classification) (Scotland) Regulations 1991 are hereby revoked.

Michael Russell

Authorised to sign by the Scottish Ministers

St. Andrews House

Edinburgh

[*date*]

# SCHEDULE 1

Regulation 6.

## BATHING WATER PROFILES

### Contents

- 1.—(1) Every bathing water profile must—
  - (a) contain a description of the physical, geographical and hydrological characteristics of—
    - (i) the bathing water; and
    - (ii) any other surface water in the catchment area of the bathing water where the surface water could be a source of pollution for the bathing water;
  - (b) identify and assess the causes of pollution that might affect bathing water quality and pose a risk to bathers' health;
  - (c) assess the potential for cyanobacterial proliferation;
  - (d) assess the potential for the proliferation of macro-algae or phytoplankton;
  - (e) identify the location of the monitoring point.
  - (f) contain (if the assessment under sub-paragraph (b) indicates that there is a risk of short-term pollution)—
    - (i) information as to the anticipated nature, frequency and duration of short-term pollution;
    - (ii) details of the expected causes of short-term pollution;
    - (iii) details of the management measures taken and the time schedule for the elimination of the causes;
    - (iv) details of the management measures taken during a short-term pollution incident; and
    - (v) the identity and contact details of any person responsible for taking the management measures during the incident.
- (2) The information in sub-paragraph (1)(a) and (b) must be detailed on a map whenever practicable.

### Review

- 2.—(1) Where a bathing water is classified as “poor”, “sufficient” or “good” under regulation 10, SEPA must review the bathing water profile—
  - (a) at the following minimum frequency—
    - (i) (i) for a “poor” classification, every two years;
    - (ii) (ii) for a “sufficient” classification, every three years; and
    - (iii) (iii) for a “good” classification, every four years; and
  - (b) taking into account the nature and severity of the pollution which affects the bathing water;

(2) Where there are significant construction works or infrastructure changes in or around a bathing water, the SEPA must review the bathing water profile before the start of the next bathing season.

## SCHEDULE 2

Regulation 7.

### MONITORING

#### PART 1

#### INTESTINAL ENTEROCOCCI AND ESCHERICHIA COLI

##### **Location of monitoring point**

1.—(1) Subject to subparagraph (3), where SEPA take samples in compliance with this part they must do so from the monitoring point situated at each bathing water.

(2) SEPA must—

(a) locate the monitoring point at every bathing water where—

(i) most bathers are expected; or

(ii) the bathing water profile indicates that greatest risk of pollution is expected; and

(b) where possible, take samples 30 centimetres below the water's surface and in water that is at least one metre deep.

(3) Where for whatever reason the taking of samples from the monitoring point is not possible or would pose a danger to any person, SEPA must take samples from the next best site (where it is possible to sample and is safe to do so, and) which satisfies the provisions of subparagraph (2).

##### **Monitoring calendar**

2.—(1) SEPA must—

(a) establish a calendar which specifies dates for sampling for every bathing water before the start of every bathing season ('a monitoring calendar'); and

(b) take samples at every bathing water no later than four days after the date specified in the monitoring calendar.

(2) In relation to exceptional circumstances or abnormal situations—

(a) during the circumstance or situation, (the incident), SEPA may suspend the monitoring calendar for the duration of the such; and

(b) as soon as possible after the end of the incident, SEPA must—

(i) take one additional sample in order to verify that the incident has ended

(ii) take sufficient additional samples to ensure that it has the minimum number required for the bathing water for the bathing season; and

(iii) notify the Scottish Ministers of the suspension, giving reasons for such.

(c) SEPA must not include the sample taken under sub-paragraph (2)(b)(i) in the set of bathing water quality data for a bathing water.

(d) should the length of the incident exceed the length of the bathing season then SEPA are relieved of their obligations in paragraph 2(2)(b)(ii).

## **Monitoring**

### **3. (1) SEPA must—**

- (a) take and analyse at least four samples from every bathing water during every bathing season except where subparagraph (2) or (3) applies;
  - (b) take the first such sample for every bathing season shortly before the start of that season; and
  - (c) take samples from every bathing water throughout the bathing season at regular intervals; and (except where the bathing water is situated in a region subject to special geographical constraints), such intervals must not exceed one month.
- (2) Where the bathing season for the particular bathing water does not exceed 8 weeks, SEPA only needs to take and analyse 3 samples instead of 4.
- (3) Where the bathing season is situated in a region subject to special geographical constraints, SEPA only needs to take and analyse 3 samples instead of 4.

## **Short-term pollution**

4.—(1) This paragraph applies where the appropriate signage and management measures for short term pollution are in place in accordance with regulations 8 and 12 respectively, and a short term pollution incident is occurring.

- (2) SEPA may decide not to include samples taken during a short-term pollution incident in the set of bathing water quality data for a bathing water.
- (3) As soon as possible after the end of the short-term pollution incident, SEPA must take one additional sample in order to verify that the incident has ended.
- (4) SEPA must not include the sample taken under sub-paragraph (3) in the set of bathing water quality data for a bathing water.
- (5) Seven days after the end of the short-term pollution incident, SEPA must, if necessary, take an additional sample to ensure that it has the minimum number required for the bathing water for the bathing season.
- (6) The number of samples disregarded under subparagraph (2) by SEPA must represent no more than the greater of either—
  - (a) 15 percent of the total number of samples provided for in the monitoring calendars for the relevant assessment period and that bathing season; or,
  - (b) one sample per bathing season.

## **PART 2**

### **CYANOBACTERIA**

5. Where any bathing water profile indicates a potential for cyanobacterial proliferation, SEPA must monitor that bathing water at the frequency necessary to allow adequate management measures to be put in place in accordance with Regulation 14.

PART 3  
OTHER POLLUTION

6. SEPA and the bathing water operator must each establish a separate visual monitoring programme at every bathing water at the frequency necessary to allow adequate management measures to be put in place in accordance with Regulation 16.

PART 4  
MACRO-ALGAE AND MARINE PHYTOPLANKTON

7. Where any bathing water profile indicates a tendency for proliferation of macro-algae or marine phytoplankton, SEPA must carry out such investigations at that bathing water as are necessary to determine whether such proliferation constitutes a health risk to bathers, and allow adequate management measures to be put in place in accordance with regulation 15.

## SCHEDULE 3

Regulation 10.

### STANDARDS

1. The SEPA must use the following standards for classification—

#### Standards for inland waters

<i>Parameter</i>	<i>“Excellent”</i>	<i>“Good”</i>	<i>“Sufficient”</i>
Intestinal enterococci <sup>(1)</sup>	200 <sup>(2)</sup>	400 <sup>(2)</sup>	330 <sup>(3)</sup>
Escherichia coli <sup>(1)</sup>	500 <sup>(2)</sup>	1,000 <sup>(2)</sup>	900 <sup>(3)</sup>

#### Standards for coastal and transitional waters

<i>Parameter</i>	<i>“Excellent”</i>	<i>“Good”</i>	<i>“Sufficient”</i>
Intestinal enterococci <sup>(1)</sup>	100 <sup>(2)</sup>	200 <sup>(2)</sup>	185 <sup>(3)</sup>
Escherichia coli <sup>(1)</sup>	250 <sup>(2)</sup>	500 <sup>(2)</sup>	500 <sup>(3)</sup>

<sup>(1)</sup> Colony forming units per 100 millilitres (“cfu/100 ml”).

<sup>(2)</sup> Based upon a 95-percentile evaluation

<sup>(3)</sup> Based upon a 90-percentile evaluation

#### Methodology

2.—(1) in this Schedule SEPA must base the “percentile values” and calculate same in compliance with the provisions set out in Annex II of the Directive.

#### Classification

3.—(1) At the end of every bathing season, the SEPA must classify a bathing water as “poor” if, in the set of bathing water quality data used, the percentile values for microbiological enumerations are higher than the “sufficient” standards set out in paragraph 1.

(2) At the end of every bathing season, SEPA must classify a bathing water as “sufficient” if—

(a) in the set of bathing water quality data, the percentile values for microbiological enumerations are equal to or lower than the “sufficient” standards set out in paragraph 1; and

(b) the bathing water is not classifiable as “good” or “excellent”.

(3) At the end of every bathing season, the SEPA must classify a bathing water as “good” if—

(a) in the set of bathing water quality data, the percentile values for microbiological enumerations are equal to or lower than the “good” standards set out in paragraph 1; and

(b) the bathing water is not classifiable as “excellent”.

(4) At the end of every bathing season, the SEPA must classify a bathing water as “excellent” if, in the set of bathing water quality data used, the percentile values for microbiological enumerations are equal to or lower than the “excellent” standards set out in paragraph 1.

#### Short Term Pollution

4.—Where a bathing water is subject to incidents of short-term pollution, it may only be classified under paragraph 3 as “sufficient”, “good” or “excellent” if the required information has been provided and management measures are in place in accordance with regulations 8 and 12.

## Annex B - Partial Regulatory Impact Assessment

### Partial Regulatory Impact Assessment

#### The Bathing Water (Scotland) Regulations 2008 (transposing legal requirements of Directive 2006/7/EC)

1. This is the Partial Regulatory Impact Assessment (RIA) of the forthcoming Bathing Water (Scotland) Regulations 2008. The RIA is being consulted upon in tandem with the draft Regulations. Your views and comments on the potential costs and benefits of this proposed new legislation are welcome, and will help shape the final RIA, which will be completed after the consultation.

#### Purpose and intended effect of measure

##### The Objective

2. The objective of the Regulations is to transpose the parts of the revised Bathing Water Directive (2006/7/EC)<sup>54</sup> into Scots law that are not already met under existing legislation. The Scottish Ministers are legally obliged to bring such legislation into force by 24 March 2008. The revised Directive will eventually repeal the provisions of the existing Directive (76/160/EEC)<sup>55</sup>, which is largely implemented in Scotland by the Bathing Water (Classification) (Scotland) Regulations 1991<sup>56</sup>. The revised Directive introduces greater protection for bathers, not only through stricter microbiological standards, but with new requirements to provide the public with information on the quality of bathing waters, therefore allowing them to make informed choices on whether they wish to bathe or not. To further public health protection, the revised Directive also requires management measures for non-bacteriological pollution at bathing waters, including pollution from cyanobacteria, marine phytoplankton, macro algae, litter and other waste.

3. It is important to note that while the Regulations require SEPA to ensure compliance with the Directive's bacteriological standards is achieved by 2015 (the timescale required by the Directive), the Regulations themselves do not set the measures by which this will be achieved. It is expected that SEPA will utilise existing powers under the Water Environment (Controlled Activities) (Scotland) Regulations 2005<sup>57</sup> and forthcoming ones under the proposed Water Environment (Controlled Activities) (Scotland) Amendment Regulations 2008 for tackling sources of pollution that may impact on bathing water quality<sup>58</sup>. This RIA does not make reference to costs incurred through the use of other regulatory measures to ensure compliance. The potential impact of this other legislation in meeting the requirements of the revised Bathing Water Directive will be examined as part of an overall impact assessment of the Water Framework Directive (2000/60/EC)<sup>59</sup>'s River Basin Management Plan, to which bathing waters are an integral part. The Scottish Government is carrying out an in-depth

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<sup>54</sup> [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l\\_064/l\\_06420060304en00370051.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_064/l_06420060304en00370051.pdf)

<sup>55</sup> <http://ec.europa.eu/water/water-bathing/directiv.html>

<sup>56</sup> [http://www.opsi.gov.uk/si/si1991/Uksi\\_19911609\\_en\\_1.htm#end](http://www.opsi.gov.uk/si/si1991/Uksi_19911609_en_1.htm#end)

<sup>57</sup> <http://www.opsi.gov.uk/legislation/scotland/ssi2005/20050348.htm>

<sup>58</sup> Scottish Government (2007) *Implementing the Water Environment and Water Services (Scotland) Act 2003: Diffuse Water Pollution from Rural Land Use: General Binding Rules and related provisions Consultation* <http://www.scotland.gov.uk/Publications/2007/09/05093837/0>

<sup>59</sup> [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/l\\_327/l\\_32720001222en00010072.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/l_327/l_32720001222en00010072.pdf)

qualitative impact assessment for the River Basin Management Plans for both the Scotland and Solway-Tweed River Basin Districts, for completion in Autumn 2008.

## **The Background**

4. The 1976 Bathing Water Directive was among the first environmental Directives introduced by the European Commission. Its aim was to protect bathers from pollution, primarily microbiological from human sewage sources. As within the rest of Europe, significant investment by Scottish Water and its predecessors in treatment works has reduced the risk of pollution of bathing waters from raw sewage. It was against this background of improved compliance, a greater scientific understanding of the risks that bacteria can have, and a higher awareness of what triggers pollution events, that the European Commission undertook to revise its Directive.

5. Adopting microbiological parameters from the World Health Organisation, the standards proposed by the revised Directive were to be much more stringent than those in the current Directive. The revised Directive also increases public participation in matters relating to bathing waters, and puts more onus onto the operators of bathing waters and public bodies to provide information to bathers to allow them to make informed decisions as to where and when they wish to bathe.

6. Various other provisions were agreed during the finalising of the Directive, which the Scottish Government had a say on through its input into the UK line during the negotiations. These included the addition of another classification, 'sufficient', to give four in total (poor, good and excellent being the others). Without this additional classification, it is likely that many more Scottish bathing waters would have been deemed poor once classification begins under the revised Directive from 2015, even though sufficient quality still provides protection. Provisions were also introduced to allow the discounting of poor results during short term pollution events when prior warning of the risks of bathing at such times is given to potential bathers.

7. The Directive finally came into force on 24 March 2006, following a lengthy negotiation process. It repeals the existing Directive at the end of 2014, while its provisions come into effect in stages from next March onwards. Our draft Regulations propose to transpose the Directive at the latest dates given by the Directive, in conjunction with the rest of the UK. This gives the opportunity for SEPA to adapt their science to the new regime, for bathing water operators to install the necessary information to bathers, and for local authorities to get acquainted with their new responsibilities. Stakeholders such as Scottish Water, SEPA and the farming industry will also have an opportunity to work together to ensure all Scotland's bathing waters meet compliance with the sufficient standard of the Directive by 2015.

## **Rationale for Government Intervention**

8. Article 18 of the revised Bathing Water Directive requires that Member States shall bring into force the law, regulations and administrative provisions necessary to comply with the Directive by 24 March 2008. As it is EU legislation, Scottish Ministers are bound by the Scotland Act 1998 to fully transpose all the provisions of the revised Bathing Water Directive.

## Consultation

9. As well as the consultation paper to which this partial RIA is part of, the Scottish Government had previously outlined its initial thoughts on implementing the Directive. These were published in March 2006 in the strategy paper, “Better bathing waters: meeting the challenges of the revised Bathing Water Directive in Scotland”<sup>60</sup> to coincide with the Directive coming into force.

## Within Government

10. The Division within the Scottish Government responsible for producing this partial RIA has consulted internally on its contents with those with a policy interest, for example, economists, agriculture, tourism, public health and the water industry. It is also the intention to consult with the Scottish Environment Protection Agency, Scottish Water and Local Authorities.

## Public Consultation

11. The partial RIA is being published alongside the draft Regulations for a full public consultation. This paper is being sent to a wide range of stakeholders, including beach operators, farming interests, tourism bodies and to community groups with a close interest in Scotland’s existing bathing waters. Any responses received on the partial RIA will be fully analysed and the comments taken on board in finalising the assessment.

## Options

- Option 1: No Regulations (the “do nothing approach”). This would not meet the requirements of the Directive.
- Option 2: Bringing the Regulations’ provisions into force earlier than required under the Directive. This would meet and exceed the requirements of the Directive.
- Option 3: Extending the Regulations’ provisions outwith the bathing season, namely signage requirements and monitoring. This would still meet and exceed the requirements of the Directive.
- Option 4: Bringing the Regulations’ into force by the latest dates allowed under the Directive. This would meet the requirements of the Directive.

## Costs and benefits

### Sectors and groups affected

12. In considering the costs and benefits of each of the options, it is important that the various sectors and groups on which the proposed Regulations will impact are properly identified and considered. This RIA recognises that the following bodies and individuals might be affected by the different options:

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<sup>60</sup> Scottish Executive (2006) *Better bathing waters: meeting the challenges of the revised Bathing Water Directive in Scotland*. [www.scotland.gov.uk/bathingwaterstrategy](http://www.scotland.gov.uk/bathingwaterstrategy)

- Bathers (as well as other water users)
- Bathing water operators (whether private, local authorities or other public bodies)
- Local authorities
- Scottish Environment Protection Agency (SEPA)
- Scottish Water (in terms of providing information)
- Tourism interests
- Health boards

13. While the Regulations require compliance with the sufficient standards by 2015, as mentioned in paragraph 3 (above), they will not be setting the measures by which this will be achieved. Therefore, stakeholders who may be required to undertake measures to ensure compliance, for example, Scottish Water and farmers, will not be affected by these Regulations for such matters, but rather through other legislation through which these Regulations' compliance aims will be met. Equally, we have not attempted to quantify the benefits that the new Directive will certainly bring – improvements to public health, the benefit to tourism and the value that the public put on having clean bathing waters. These issues will be explored in the Government's assessment of the environmental, economic and social impacts of the River Basin Management Plans, of which bathing waters are a part.

**Consultees are also invited to identify any further sectors or organisations not listed in the bullets in paragraph 12 that they believe might be impacted upon by the Regulations.**

### **Benefits**

14. *Option 1:* Option 1 is the baseline against which Options 2, 3 and 4 can be compared. It would not involve any new implementation or policy costs. Continuing to monitor bathing waters under the current regime would benefit both bathing water operators and relevant local authorities in that they would not face any obligations, as they will under the revised Directive. SEPA would be able to continue sampling for the old parameters, rather than having to develop expensive techniques for the new ones. Bathers would continue to be protected under a known regime.

15. *Options 2 and 4:* There are clear benefits from implementing the Directive, particularly in relation to better health protection, especially for children. Bathing in waters contaminated by faecal pollution can lead to illness, such as gastroenteritis. Research<sup>61</sup> carried out for the Government shows that families with children are the most common users of Scottish beaches, with these children more likely to be present in the water than any other users. The research also showed that the two most important factors for those visiting Scottish beaches were the cleanliness of the beach and of the water. A third of the Scottish population also stated that one of their reasons for going to a beach was to go paddling, swimming or to take part in other activities in or on the water. Therefore the better protection that the revised Directive offers brings clear benefits to a very large number of people, not only reducing the risk to them of becoming ill, but potentially reducing the burden on the health service and helping the economy by reducing possible absenteeism from employment or education.

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<sup>61</sup> Scottish Executive/TNS Travel and Tourism (2004) *Bathing Water Use in Scotland*  
<http://www.scotland.gov.uk/Publications/2004/04/19210/35645>

16. However, as we have said previously, the Regulations only implement part of the Directive, and the immediate focus of this RIA is the benefits that the Regulations themselves will bring. We have listed below what we perceive would be the main benefits to arise from these Regulations. The benefits from pursuing either Option 2 or 4 would be the same – the only difference is that the benefits from following Option 2 would be achieved earlier. Following Option 3, which only considers the extension of provisions under the Regulations, would provide greater protection and information over a longer period than just during the bathing season.

17. Bathing water operator – We believe the operator of the bathing water should be responsible for signage informing bathers about the quality of the bathing water, and to be responsible for removing litter and other waste within the designated area. Operators will generally have a vested interest in ensuring the bathing water is suitable for bathing, particularly if they have facilities nearby which depend on the beach. They will also be aware of the best location to site any signage in order that it can be read by the maximum number of visitors. This also helps encourage local “ownership” of the bathing water. The bathing water operator will have to be identified from 2008, the earliest date for either Option 2 or 4, and is irrelevant to Option 3.

18. Designation of bathing waters – the revised Directive requires Ministers to designate bathing waters where it is expected a large number of people may practise bathing. Under the current Directive, we have generally only designated bathing waters where there has been local support for doing so. This does not protect bathers at other sites which are currently undesignated which might have heavy usage. The new provision will address that imbalance. This must come into force from 2008, the earliest date for either Option 2 or 4, and is irrelevant to Option 3. The Regulations would also allow the de-designation of sites that have little usage. This will bring direct savings in terms of the obligations required at bathing waters under these Regulations.

19. Bathing water profiles – SEPA are required to compile a profile on every bathing water which will clearly inform the public about the potential health risks due to bacteriological, cyanobacterial, macro algae and/or marine phytoplankton contamination from bathing at a particular site. This needs to be achieved by 24 March 2011 at the latest. How early this could be implemented for Option 2 is dependent on when a working group established by Member States and the Commission to discuss this further delivers its outcomes. This is irrelevant to Option 3.

20. Monitoring, assessing and classifying bathing waters under new parameters – The new parameters to be monitored, Intestinal enterococci and Escherichia coli, give a more up-to-date scientific indication of the risks to bathers’ health from microbiological pollution. They are stricter, therefore further enhancing public health. The flexibility allowed in sampling also ensures that SEPA’s resources can be better directed to sampling the water on the days when bathers are actually likely to be present. Assessing and classifying bathing waters on a number of years data presents a truer picture of the overall quality, rather than the traditional snapshot approach. Classification under the Directive is required at the latest by 2015. Based on four years of data, it could conceivably be undertaken by 2011, if Option 2 were to be followed. Sufficient quality or above should be met by 2015. Again if Option 2 was to be followed, this could be set for possible achievement for 2011 at the earliest. This would also allow an additional four years for compliance to be met before the Directive’s deadline of 2015 is reached.

21. Monitoring for longer than the bathing season (Option 3) would provide water quality information to members of the public who chose to use bathing waters outwith the traditional bathing season.

22. Public information including signage and other information – The revised Directive puts great emphasis on the need for the public to be informed of the quality of bathing waters that they might wish to use. Every designated bathing water in Europe will require to have signage erected, giving clear advice to bathers. There are clear benefits from having signage at beaches to inform the public about the quality of the water and potential risks to their health. By providing this advice, bathing water operators will be able to show that they are protecting the health of bathers using their sites. In 2003 the Government trialled the use of electronic variable messaging signs at a number of bathing waters in Scotland which were able to inform bathers of the potential quality of the bathing water<sup>62</sup>. Market research<sup>63</sup> carried out following installation of the signs showed that signage was positively received by the majority of potential bathers, with 80% stating that the sign had increased their awareness of water quality at the site they were visiting.

23. Information will also need to be made available over the internet and through other means, further giving the public an opportunity to make an informed choice on whether to bathe. The Regulations also clarify who is responsible for providing information and when – a clear benefit to bathers by removing the current ambiguity.

24. While information must be provided by 2012, the exact format of signage is still being determined by the Commission in conjunction with Member States, so it is not yet possible to determine how early this provision could be brought in. While we cannot make a clear distinction between Options 2 and 4 at this stage, it would be normal to expect operators to be updating and/or installing signage in the years running up to the signage requirement coming into force, as signage has a finite lifespan. There would obviously be financial benefits to bathing water operators in allowing them to install new signs to the Directive's design prior to 2012, if this saved them having to install temporary signage until 2012 (Option 2).that they would be intending to install anyway. There would obviously be a direct benefit to bathers if the information was made available earlier. It is also unclear whether bathing water operators will choose to display signage all year round, as is the case with many existing bathing beach signs. If they do (Option 3), this would provide important information to users outwith the bathing period.

25. The revised Directive also allows samples to be discounted during certain pollution events, provided information is given to the public regarding the risk to their health. This will require SEPA to give proactive warnings to bathers or advise bathing water operators where it has identified such risks. The variable messaging signs mentioned above, and which are now operated by SEPA, have trialled this provision. This benefits bathers in that a warning is given of predicted current pollution, and the discounted sample would thus not be representative of when people would normally be bathing. There may be some benefit in providing predictive warnings to users outwith the bathing season (Option 3), although the requirement for discounting would not be necessary. Information also needs to be provided to warn the public of other potential pollution events – these are discussed below.

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<sup>62</sup> Scottish Executive/Faber Maunsell (2003/2004) *Bathing water signage pilot project* [www.scotland.gov.uk/bathingwaters](http://www.scotland.gov.uk/bathingwaters)

<sup>63</sup> Scottish Executive/mruk (2004) *Assessing the effectiveness of variable messaging signs to inform beach users about bathing water quality*. <http://www.scotland.gov.uk/Topics/Environment/Water/15561/VMSREPORT>

26. Management measures at bathing waters affected by cyanobacterial pollution – The Regulations require where cyanobacteria is present and a health risk identified, measures must be taken to reduce the threat to bathers, including its possible removal by the local authority. This is tied to the profile, so does not need to come into force until 2011 at the latest. Cyanobacteria can be very harmful to public health, so there is a very real benefit from this provision. However, it is also extremely rare in Scottish bathing waters, so there is unlikely to be too great a call for action to remove it. The Scottish Government has already issued guidance<sup>64</sup> for minimising the risks to public health from cyanobacteria. This includes options for its removal. The Regulations provide in legislation what is already largely suggested in the guidance, including duties on local authorities. The Government would also expect public bodies to follow the guidance, which is not limited to the bathing season, including providing information, so that earlier adoption of this measure prior to 2011 (or outwith the season) does not bring any extra benefits.

27. Management measures at bathing waters affected by macro-algae and marine phytoplankton proliferation – The Regulations also require that where the profile indicates a tendency for the proliferation of macro-algae and marine phytoplankton, suitable management measures are undertaken. This would include signage erected by the local authority as well as its possible removal where it is determined a health risk or unacceptable. This is a new provision, and its inclusion would protect bathers from the serious health risks that can develop from algal blooms. However, there is equally little evidence of marine phytoplankton exhibiting a health risk in Scottish waters, so no action would be required for the vast majority of bathing waters. We also propose some flexibility in determining whether macro-algae or seaweed is a health risk or is unacceptable, so that local authorities will only be required to take action in certain cases. Option 2 would suggest bringing this into force earlier than 2011, the date by which the Directive requires us to do so. While there may be some benefits in doing so earlier, even though the perceived risk in Scotland is so low, it requires SEPA to have properly profiled any risks, which SEPA are only now beginning to undertake. There would be benefits in undertaking such management measures outwith the bathing season (Option 3).

28. Management measures at bathing waters affected by other pollution – The Regulations require that regular inspections are carried out for pollution such as tarry residues, glass, plastic, rubber and other waste, and for remedial action to be carried out where necessary. We propose that beach operators should be responsible for remediating the bathing waters that they are responsible for – the benefit here is that this ties in with existing waste legislation and does not introduce a new regime at odds with current practice. Operators will also have an interest in ensuring the bathing water is cleaned of waste, especially if it has an economic value to them. The Regulations only cover the bathing water area – other parts of the beach are covered under existing waste legislation – and in practice, most beach operators already clean the exposed tidal parts of the bathing water, when in the process of cleaning the beach, so any additional costs are likely to be minimal. There would undoubtedly be benefits to those using bathing waters from introducing such management measures at the earliest opportunity in line with Option 2, and outwith the season (Option 3).

29. Relevant local authority duties – The Regulations propose that each relevant local authority identifies an official who has overall responsibility for the duties under this legislation. The benefit of this is that it will clarify the point of contact for Ministers, SEPA

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<sup>64</sup> Scottish Executive Health Department (2007) *Blue-Green Algae (Cyanobacteria) in Inland and Inshore Waters: Assessment and Minimisation of Risks to Public Health*  
<http://www.scotland.gov.uk/Resource/Doc/175959/0049536.pdf>

and other bodies with the local authorities and avoid some of the ambiguity that exists at present. This does not mean that local authorities need to recruit additional staff. We would expect them to utilise existing officials where necessary. This provision would only need to be brought into force when the other duties on local authorities commence.

30. Local authorities will have a number of duties placed upon them under the Regulations, both where they are the bathing water operator and as the relevant local authority. Public information provision and the various management measures where pollution is posing a health risk have been discussed above. Local authorities have also been given an enforcement role, including powers of entry, but the Regulations make clear that their costs in carrying out this role can be recovered from the bathing water operator.

## Costs

31. *Option 1:* As well as being legally indefensible (the Scotland Act 1998 requires that Ministers meet their European obligations), this option would be politically and financially costly. Failure to make these Regulations would prevent the transposition of the Directive and would lead to the UK being infringed by the European Commission, with the potential for heavy fines imposed on the Member State if steps are not taken to redress this issue. These fines may have to be met out of Scottish Government funds, impacting on the service it provides to the people of Scotland. The Scottish Government would also be failing to protect the health of bathers in Scotland if it did not adopt the new regime. This would have knock on costs to beach operators and the tourist industry, with possibility of Scottish beaches being labelled dirty. Also, as bathing waters are protected areas under the Water Framework Directive, any failure to implement the Directive could mean that we have failed to implement the WFD.

32. *Options 2, 3 and 4:* The costs associated with introducing these Regulations will certainly be higher than if we were to maintain the existing regime. However, as we have already explained, the option of retaining the status quo is not legally viable. This leaves Options 2, 3 and 4 as the only ones possible. The difference in costs between these Option 4 and the others, is that they would have to be met earlier under Option 2, while there would be additional pressures on resources if the year round provisions of Option 3 were to be chosen.

33. Bathing water operator – As the Regulations introduce requirements on bathing water operators for the first time, we accept that there will be new costs on them, particular in relation to signage and other pollution control measures, which are both commented on below. The majority of operators are likely to be public sector bodies, but we are aware that there are a small number of private operators.

34. Designation of bathing waters – The revised Directive requires that we designate bathing waters where we expect a large number of bathers to be present. Following surveys undertaken in 2003, the Government identified a potential additional twelve bathing waters in its 2004 consultation paper on bathing water identifications<sup>65</sup>. These will bring costs for monitoring, providing information and meeting the various management measures. It is accepted that there will be additional costs in terms of meeting compliance, but these are not considered in this RIA. Equally, there is the possibility of delisting sites which do not have heavy usage, and sites may be dedesignated after measures have already been put in place, for

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<sup>65</sup> Scottish Executive (2004) *Consultation on proposals for a bathing water identification strategy Paper 2004/7*  
<http://www.scotland.gov.uk/consultations/environment/bwisc-00.asp>

example signage. To meet the requirements of the Directive, sites would still have to be considered on the basis of usage during the bathing season, rather than at other times.

35. Bathing water profiles – SEPA already undertake analysis of the impacts on bathing waters and report on these in their Pollution Reduction Plans, so it is expected that the requirement to complete profiles will not have significant cost implications. There may also be cost savings in that the Plans are updated each year, whereas profiles only need to be updated every two to four years depending on the bathing water classification. These Plans are also available on SEPA's website all year round, as it would be expected for the Profiles.

36. Monitoring, assessing and classifying bathing waters under new parameters – It is accepted that the new monitoring, assessment and classification regime will bring new costs to SEPA. SEPA currently operate on a fixed sampling basis, so utilising a sampling calendar will not pose any additional problems or costs. However, the revised Directive allows for flexible sampling and the Regulations make provision for this. If SEPA are to undertake flexible sampling, it would put more strain on their monitoring capability, especially due to the distances between some bathing waters and SEPA offices, and the possible need for on-call weekend cover to provide this flexibility. The Directive also requires more investigative sampling to show that pollution events are over. Again, we recognise that this might put a strain on SEPA's monitoring operations, especially if this requires rapid testing methods, which are still at an embryonic stage. If monitoring were to be undertaken outwith the season (Option 3), this could lead to quite substantial operational costs for SEPA, particularly at a time when there would traditionally be little use of the bathing water for bathing.

37. Public information including signage and other information – A central tenet of the revised Directive is the requirement to provide members of the public with information about potential risks to their health from bathing. This role falls on SEPA, bathing water operators and relevant local authorities. All bathing waters must have a sign installed by the 2012, which lists the information required under Regulation 8. This will be the responsibility of the bathing water operator. As signs may need to include specific symbols determined by the Commission, it is too early to say what the exact format the sign may take. However, a bare basic fixed panel type sign is likely to cost only a few hundred pounds apiece, although installation and potential design costs also need to be assessed. If a common design is developed for Scotland, this could bring costs down considerably. As the majority of bathing waters are coastal, signs will generally have a fairly limited lifespan, although this is very much dependent on how exposed the sign is to the elements, and what it is made of.

38. It will be important to let operators know in advance of these forthcoming requirements, so as to avoid unnecessary expense of purchasing new signs that do not meet the Directive's requirements. However, until the Commission's working group has determined the design of the symbols to be used, we are not in a position to know what will be required, so any signs installed prior to this will need to be replaced, at extra expense to the bathing water operator. Option 2 cannot be considered until the Commission delivers its verdict.

39. Operators will also have to factor in vandalism or accidental damage, as well as weathering and corrosion/rot so it is likely that signs may have to be replaced on average around once every decade or so. Signs will be required to provide information where bathing is permanently advised against. Not only will this have cost implications in terms of providing the sign, but the requirement to provide a permanent warning may dissuade people from visiting the bathing water, which may impact on the local economy (however, the research into

the effectiveness of the variable messaging signs somewhat surprisingly suggested that only around 20% of people thought that it influenced their behaviour<sup>66</sup>).

40. Some operators may chose to keep their signs up all-year-round (Option 3), and this would have a direct bearing on the lifespan of the sign, with the sign needing to be replaced more frequently than signage only installed during the bathing season.

41. Local authorities will be responsible for ensuring that an updating of the sign is undertaken to indicate when an abnormal situation occurs, or where there is a cyanobacterial, macro-algae or marine phytoplankton proliferation. They will also be responsible for informing the public when short-term pollution is predicted in the absence of a SEPA variable messaging sign, with SEPA providing them with the relevant information. This will incur not only the cost of producing a temporary addition to the main bathing water sign, but also local authority time in installing the additional warning, and modelling work by SEPA to enable the predictions to be made.

42. Where the SEPA sign is present, SEPA is responsible for advising that pollution is present or predicted. SEPA currently has ten signs inherited as part of a Scottish Government project. Their aim is to increase this number to over twenty at sites where prediction is possible. SEPA also undertake the prediction work necessary to inform of short-term pollution events, which includes the use of a network of river gauges. There are two types of cost associated with SEPA's signage. Capital expenditure of signage is around £30-40,000 per sign. This also includes the purchase of additional rain gauges where necessary. Computer software was also specially developed which had a one-off capital cost of £10,000. There are also annual running costs including the installation and removal of signs at the start and end of each season, as well as staffing costs to operate the signs. SEPA intend to increase the number of signs prior to 2012 (which would meet the requirements of Option 2), but this is dependent on internal funding and suitable modelling of the bathing water. Having the signs installed prior to 2011 would have higher operational and capital costs for SEPA than if Option 4 were chosen, although it must be remembered that ten signs are already an integral part of SEPA's current bathing water work.

43. If SEPA were to keep the signs installed outwith the bathing season, there would be considerable extra costs incurred, not only in maintaining and replacing the signs, but through the need to undertake the monitoring and modelling necessary to provide the necessary predictions.

44. Management measures at bathing waters affected by cyanobacterial pollution – We have already said that the occurrence of cyanobacterial pollution at Scottish bathing waters is very rare. Even if it were to occur, the recent Government document on blue-green algal outbreaks<sup>67</sup> already requires that local health boards and authorities have a plan of action to deal with any risk, so any additional costs are likely to be minimal. Public information is also required under the guidance, similar to the duty under the Regulations to update the bathing water sign. If there is an outbreak, removal would incur costs; equally failure to do so by leaving the scum lying could potentially damage the local tourist economy.

45. Management measures at bathing waters affected by macro-algae and marine phytoplankton proliferation – The potential costs associated with management measures for

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<sup>66</sup> Scottish Executive/mruk (2004) ibid

<sup>67</sup> Scottish Executive Health Department (2007) ibid

macro-algae and marine phytoplankton need to be considered separately. The Regulations require that management measures are undertaken where it is determined by the interested parties that a proliferation either poses a health risk or is unacceptable. Risks from marine phytoplankton blooms, in the form of a scum or mat, are similar to those for cyanobacteria, but like cyanobacteria, occurrences in Scottish bathing waters are negligible. Any costs associated would be for warning signs (see above) and possible removal, similar to those for cyanobacteria. Due to the potential health risk of marine phytoplankton blooms (such as red tide), it is likely that the proliferation would be judged in terms of its health impact rather than its acceptability.

46. Macro-algae, otherwise known as seaweed, are in turn more likely to be considered on their acceptability rather than their health risk. We believe guidance, similar to the Government's existing Code of Practice on Litter and Refuse<sup>68</sup>, may be required in order to help determine what is acceptable. Where macro-algae is classed as unacceptable, costs to local authorities will be similar to those incurred for the current removal of litter from beaches for which they are responsible. Costs are dependent on the type of bathing water (stony or sandy foreshore), physical access and the variety of macro-algae present. As it is an organic material, it is also probable that local authorities would have to ensure disposal is not through landfill in future, except where heavily contaminated through waste.

47. Management measures at bathing waters affected by other pollution – In terms of costs incurred for the removal of waste from bathing waters, this is also dependent on the nature of the bathing water (whether mechanical means can be used or hand picking only), and the form of waste present. For practical reasons, we would expect the beach operator to focus on the removal of waste from the part of the bathing water exposed at low tide. Certain types of waste that may be washed ashore would fall more specifically within the ambit of other forms of regulation in terms of its removal, largely due to its immediate risk to human health i.e. chemical containers. The majority of bathing water operators are likely to be local authorities who already have a duty to remove litter from above the high water mark (where most waste is likely to be deposited) under the Environment Act 1990 and at a frequency greater than that proposed under the Regulations. In practice, most local authorities already clear below this mark where they can and as such the cost of removing waste is going to be fairly negligible in terms of existing duties.

48. Private operators do not currently have to clean beaches, unless it has been designated a litter control area by the local authority, and only then it would be the area above the high water mark. We accept there will be additional costs incurred here, but where the operator has a financial interest (and which we propose in the Regulations that SEPA will where possible, be taking into consideration in identifying the bathing water operator), it would be in their interest to clean the bathing water. However, we equally recognise that in some cases the bathing water operator may be identified on the basis of their ownership of the main access route to the beach, and would have less of a direct interest in the bathing water being kept clean than if they had financial considerations. It is also important to note that these requirements would only apply to litter and other waste below the high water mark (the area designated as a bathing water). Waste above that line would continue to be dealt with through separate waste legislation.

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<sup>68</sup> Scottish Executive (2006) *Code of Practice on Litter and Refuse* <http://www.littercode.org/>

49. Relevant local authority duties – We would expect local authorities to identify a point of contact from within their current staff who have an existing responsibility in this area, rather than needing to recruit, in order to save on additional expense.

### **Preferred option**

50. Option 4 has been identified as the preferred option on the basis that it delivers the benefits to bathers in a timeframe suitable for stakeholders to adapt to the measures required. This would allow SEPA to adapt their scientific capabilities to the new regime (sampling is not yet carried out under the new parameters) and rapid testing, required for short term and other pollution events, is still at the research stage. It would also allow bathing water operators to install the necessary information to bathers once the Commission and Member States have determined what will need to be provided, and for local authorities to get acquainted with their new responsibilities.

51. Option 1 is neither legally, politically or financially viable, and as such its costs outweigh the few advantages it may have. Option 2 would obviously cost more than Option 4 in that duties on SEPA, local authorities, beach operators and others would have to be undertaken earlier. While there would be benefits in implementing parts of the Directive earlier, for other sections, the requirements are already being met – for example cyanobacteria – or still unclear – signage, sampling methodology. It would therefore make sense to follow the timescale provided for under the Directive. This after all was the result of measured consideration between the European Parliament, the Commission and the Member States. Option 4 also provides for transposition of the Directive at the same time proposed for the rest of the UK, which makes sense, as the Commission will only consider completion of transposition of the Directive on a UK basis.

52. Option 3 has obvious attractions in that it would provide potential water users with information about water quality out with the bathing season, as well as putting measures in place to reduce certain types of pollution should they occur. However, the aim of the Directive is to protect bathers, and Scotland's climatic conditions mean that bathing is very rarely practised out with the summer months. If there are no bathers to protect, this leaves little rationale for regular monitoring, SEPA predictive signage or management measures to be carried out outside of the bathing season under this Directive. There may well be fixed signage up all year round, but we would leave that to the discretion of the individual bathing water operator, rather than unnecessarily encouraging signage for periods when such information is not required, especially as they have a limited lifespan. As we have already said, general management proposals already exist for dealing with algal blooms and local authorities would still be responsible for cleaning amenity beaches out of season, albeit less frequently. On the basis that bathers are unlikely to be present out with the bathing season, Option 3 can be discounted, as the costs to SEPA, local authorities and bathing water operators outweighs the benefits to any bathers present.

### **Pollution control measures**

53. Meeting the requirements of the revised Bathing Water Directive is an integral part of the existing Water Framework Directive (2000/60/EC). The legislation to implement the pollution control requirements of the Water Framework Directive are either already in place or will be shortly. As stated in paragraph 3, this RIA does not examine the potential costs and benefits of using the pollution control measures already made under other legislation as these have either been subject to separate RIAs or will be examined in the Scottish Government's

forthcoming assessment of impacts of the River Basin Management Plans. In order to achieve compliance with the revised Bathing Water Directive's standards it is envisaged SEPA will utilise the powers under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 which we intend to supplement shortly with the forthcoming diffuse pollution General Binding Rules. The completed RIA for the 2005 Regulations<sup>69</sup> is available on the Government's website, whilst that for the General Binding Rules will be available when Regulations containing them come into force in early 2008, (subject to parliamentary approval).

### **Small/Micro Firms Impact Test**

54. As we have said earlier, the Regulations do not introduce new measures for tackling the potential pollution risk to bathing waters. Any impact of the Regulations on farmers and businesses within bathing waters with private sewerage systems will be from existing legislation under the Water Environment and Water Services (Scotland) Act 2003 which transposes the WFD. This will be considered in the Government's forthcoming impact assessment for the River Basin Management Plans.

55. Businesses most likely to be affected by the new Regulations are those that SEPA determine are the bathing water operator. This could include caravan park operators or others who have an interest in promoting the bathing water. Bathing water operators will have to provide the necessary signage to inform bathers of the quality of the bathing water. They will also have to visually monitor the bathing water for litter and other waste, implementing measures to alleviate where necessary. However, by informing the public and ensuring there is no waste to endanger health, they are protecting, what for the majority of operators, will be a very important asset to their business. Consultation on this partial RIA will inform the Scottish Government of the impact that the Regulations might have on this important sector of the economy.

56. As well as consulting directly with bathing water operators, we will also engage with their representative bodies, such as the Federation of Small Businesses Scotland.

**This partial RIA is particularly aimed at seeking the views of the Scottish business sector on the potential implications these Regulations may have on them. Small businesses who might be affected and their representatives are particularly invited to respond to this consultation.**

### **Legal Aid Impact Test**

57. These Regulations introduce rights of appeal (Regulation 20) against SEPA's determination of the bathing water operator, and against notices or proposed actions from a relevant local authority. In a very small number of cases, a private individual could foreseeably be identified as the bathing water operator (there are currently only five private beach operators in Scotland, out of 61 designated sites, and most of these are small businesses rather than individuals). As such, it would be prudent to determine whether the right of appeal could possibly introduce any additional burdens on the legal aid fund. Our regulatory proposals are being assessed by the Scottish Legal Aid Board, although it is the Government's

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<sup>69</sup> Scottish Executive (2005) *Policy Statement and Regulatory Impact Assessment accompanying the Controlled Activities Regulations* <http://www.scotland.gov.uk/Publications/2005/05/0995747/57481>

view that the Regulations would not place an additional strain on legal aid resources as legal aid can only be granted to individuals therefore impact would be negligible.

### **Test Run of business forms**

58. The draft Regulations do not introduce any business forms.

### **Competition assessment**

59. We do not expect the draft Regulations to have any impact on competition. The Directive requires that all bathing waters reach the same sufficient standard or above by 2015, except where this is technically infeasible or disproportionately expensive. We accept that certain sites will initially be of better quality than others by the nature of their location and lack of potential pollution threats. It might also be determined that other sites may never reach sufficient and bathing be advised against on a permanent basis. This may well have a bearing on future beach usage, with the public more likely to visit a bathing water which exhibits good quality, than from using a 'dirty' beach, which the Regulations will require the operator to display signage indicating poor water quality. However, rather than distorting competition between beach operators, the standards set by the Directive and introduced by the Regulations are applicable to all and are designed to provide an equal level of health protection across all European Member States. The measures to achieve compliance in Scotland (separate from these Regulations), will be determined by the level of risk of failure at each bathing water, with the aim of achieving firstly sufficient then good status.

### **Enforcement, sanctions and monitoring**

60. The Regulations make provision for either SEPA or the relevant local authority to serve notice against a bathing water operator to undertake the duties required under the Regulations. The Regulations provide for the local authority to undertake any of these duties when the bathing water operator fails to do so, either in whole or in part, including providing them with the relevant powers of entry. The local authority is also enabled to recover from the bathing water operator any reasonable expenses incurred in undertaking these duties. The operator equally has a right of appeal when a notice is served against them. The Scottish Government, local authorities and SEPA will be responsible for monitoring compliance with the Regulations.

## **Annex C – Community beach/bathing water support proposal**

### **Community involvement in beaches funding scheme**

#### **Suggested aims and objectives**

##### **Aim:**

To encourage, facilitate and reward communities by designated bathing waters who are involved in litter prevention campaigns or events which would raise awareness of the impacts of coastal and marine litter on the environment.

##### **Objectives:**

- To provide funding to appropriate community groups to carry out practical clean-ups of the environment or run litter prevention campaigns in the area surrounding the designated bathing water.
- To support and promote community action with a focus on reducing litter pollution at Scottish bathing beaches.
- To raise awareness of the problems of coastal and marine litter pollution with support of the Clean Coast Scotland partner organisations.

It is proposed that grant funding could run for a period of three years, although any grant given would have to be spent within the financial year that it is given and on a project related to the three objectives outlined above. The grant would be given in advance of the bathing water season in which it would be spent. Only one grant would be issued per bathing water per year, however a group may be entitled to claim a grant for other designated bathing waters in which it operates.

Environmental Campaigns (Scotland), through the Clean Coast Scotland network, would provide web and press support on the grant scheme and would provide the Scottish Government with an annual report on the take up of the grant schemes and the success of the activities.

Any schemes funded would be additional to and not instead of the statutory duties of local authorities under the Environmental Protection Act 1990 in respect of cleaning beaches in their ownership above the high water mark, and additional to any requirements on bathing water operators below that mark, as proposed under the draft Bathing Water (Scotland) Regulations 2008. Given this, the Scottish Ministers consider that the total resources needed for grant funding in this area are modest and should be restricted to a total of £4,000 a year across Scotland as a whole.

The Code of Practice on Litter and Refuse (Scotland) 2006 approved under the 1990 Act provides details of how local authorities should keep beaches under their control free from litter and refuse as far as is practicably possible and within reason and the timescales for doing so. Further information on their legal duties is available in the booklet – ‘Litter & Scottish Beaches – a guide for the public and practitioners’ which can be downloaded at [www.littercode.org](http://www.littercode.org) or [www.keepsotlandbeautiful.org](http://www.keepsotlandbeautiful.org).

#### **Possible grant activities**

There are potentially numerous activities or outcomes which a community group might wish to achieve as a result of receiving a grant.

Potential grant scheme projects could involve:

- **Organising a clean up** as part of KSB's National Spring Clean event. The money could be spent on providing clean up and publicity materials (*Litter pickers, black bags and hoops, first aid kit, hand wipes, spades, forks, rubber gloves, or even a wheelbarrow or rubber boots*) / litter removal costs / refreshments for the volunteers. [www.keepsotlandbeautiful.org/springclean](http://www.keepsotlandbeautiful.org/springclean)
- **Arranging a beach & bathing water day.** The money could cover costs of workshops, a film showings about marine litter, a talk about the impact of litter on marine wildlife and public health, transport for children to visit the beach for the day/workshop from a local school.
- **Information improvements** – the grant could be used to put in sensitive signage for displaying information about litter surveys, litter picks, sources of litter and impacts of litter on designated bathing waters. This would be additional and not instead of any signage required under the draft 2008 Regulations.
- **Producing local publicity material.** The grant could be spent publishing posters designed by the local school children on the impacts of coastal litter and why it should be stopped.
- **Surveying the beach litter** as part of the Marine Conservation Society's Adopt-a-Beach or Beachwatch scheme. The grant could be spent on clean up materials, postage of survey results, a small report on the local types and sources of litter found which could be displayed at the beach information board. ([www.adoptabeach.org.uk](http://www.adoptabeach.org.uk))
- **Litter ports.** The grant could be used to buy raw materials to construct litter ports (collection points for litter a long way from beach access points which can be emptied by arrangement) and to facilitate litter collection.
- **Recycling bins.** The grant money could help pay for raw materials, or for the construction of frames for recycling bins. These could even be made of the recycle (i.e. plastic bottle walls in a wooden frame for recycling plastic, can walls for aluminium etc).
- **Permanent barbeque area.** The grant could be used to install a permanent barbeque area close to the beach twinned with information highlighting the damage disposable barbecues can cause if used inappropriately.
- **Campaign.** Producing literature, posters, information about why the community wants to keep the area clean. This could perhaps involve running a workshop with Scottish Water on sewage related debris and how to tackle it, promoting the "Bag it and bin it" message in schools or to community groups.
- **Neighbourhood awards.** Money could be spent on putting together a local group to devise an action plan to improve the area around the bathing water. Painting an old shelter, improving the floral displays, removing litter from the car parks, beaches, considering biodiversity and the impacts marine litter can have on it locally. ([www.beautifulscotland.org](http://www.beautifulscotland.org))

**Your views on these proposals are welcome, particularly on determining which community groups would be eligible for funding.**

## **Annex D - List of consultees**

Association of Scottish Community Councils  
Beach and potential bathing water operators  
Coastal fora (including Scottish Coastal Forum)  
Community interests in vicinity of bathing water  
Crown Estate  
Environmental non-governmental organisations  
Health boards  
Keep Scotland Beautiful  
Legal interests  
Local authorities (including Convention of Scottish Local Authorities)  
Maritime and Coastguard Agency  
National Farming Union Scotland  
Scottish Environment Protection Agency  
Scottish Natural Heritage  
Scottish Parliament  
Scottish Water  
Tourism interests (including VisitScotland)  
UK Government and devolved administrations  
Water industry interests (including UKWIR)

## Annex E - Respondee Information Form

### Better bathing waters for all: Implementing the revised Bathing Water Directive in Scotland: Consultation on the draft Bathing Water (Scotland) Regulations 2008

Please complete the details below and attach it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

Name:

Postal Address:

1. Are you responding as: (please tick one box)

- (a) an individual  go to Q2a/b and then Q4  
(b) **on behalf of** a group or organisation  go to Q3 and then Q4

2a. **INDIVIDUALS:**

Do you agree to your response being made available to the public (in the Scottish Government library and/or on the Scottish Government website)?

- Yes (go to 2b below)   
No, not at all  We will treat your response as confidential

2b. **Where confidentiality is not requested**, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

- Yes, make my response, name and address all available   
Yes, make my response available, but not my name or address   
Yes, make my response and name available, but not my address

#### ON BEHALF OF GROUPS OR ORGANISATIONS:

3. Your name and address as respondees **will be** made available to the public (in the Scottish Government library and/or on Scottish Government website). Are you content for your **response** to be made available?

- Yes   
No  We will treat your response as confidential

#### SHARING RESPONSES/FUTURE ENGAGEMENT

4. We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in the future in relation to this consultation response?

- Yes   
No