



STATUTORY INSTRUMENTS

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BATHING WATER QUALITY REGULATIONS 2008

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BATHING WATER QUALITY REGULATIONS 2008

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BATHING WATER QUALITY REGULATIONS 2008

WHEREAS, I, JOHN GORMLEY, Minister for the Environment, Heritage and Local Government, having regard to section 3(3) of the European Communities Act 1972 (as inserted by section 2 of the European Communities Act 2007) (hereinafter referred to as the Act of 1972), consider it necessary for the purpose of giving full effect to Directive 2000/60/EC of 23 October 2000¹ and Directive 2006/7/EC of 15 February 2006² make provision for offences under the following Regulations to be prosecuted on indictment:

AND WHEREAS, I consider that it is necessary, having further regard to section 3(3) of the Act of 1972, and for the purpose of ensuring that penalties in respect of an offence prosecuted in that manner under the following Regulations are effective, proportionate and have a deterrent effect, having regard to the acts or omissions of which the offence consists, to make such provision in the following Regulations:

NOW THEREFORE, I, JOHN GORMLEY, Minister for the Environment, Heritage and Local Government, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No.27 of 1972) as amended by the European Communities Act 2007 (No. 18 of 2007) and for the purpose of giving effect to Directive 2000/60/EC of 23 October 2000 and Directive 2006/7/EC of 15 February 2006, hereby make the following Regulations:

Citation

1. These Regulations may be cited as the Bathing Water Quality Regulations 2008.

Interpretation

2. (1) Any word or expression which is used in these Regulations and is also used in the Directive has the same meaning as in the Directive except where these Regulations provide otherwise.

(2) In these Regulations, save where the context otherwise requires—

“the 1992 Regulations” means the Quality of Bathing Waters Regulations, 1992 (S.I. No. 155 of 1992);

“abnormal situation” means an event or combination of events impacting on bathing water quality at the location concerned and not expected to occur on average more than once every four years;

¹OJ L 327, 22.12.2000, p. 1

²OJ L 64, 4.3.2006, p.37

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 28th March, 2008.

“bathing water” means water identified by a local authority in accordance with Regulation 4;

“bathing season” in any year means the period from 1 June to 15 September in that year;

“the Commission” means the Commission of the European Communities;

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

“the Directive” means Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC;

“the EPA” means the Environmental Protection Agency;

“local authority” means a city council or a county council;

“management measures” means the following measures undertaken with respect to bathing water:

- (a) establishing and maintaining a bathing water profile;
- (b) establishing a monitoring calendar;
- (c) monitoring a bathing water;
- (d) assessing bathing water quality;
- (e) classifying bathing water;
- (f) identifying and assessing causes of pollution that might affect bathing waters and impair the health of bathers;
- (g) giving information to the public;
- (h) taking action to prevent the exposure of bathers to pollution;
- (i) taking action to reduce the risk of pollution;

“the Minister” means the Minister for the Environment, Heritage and Local Government;

“permanent” means, in relation to a bathing prohibition or advice against bathing, lasting for at least one whole bathing season;

“pollution” means the presence of microbiological contamination or other organisms or waste affecting bathing water quality and presenting a risk to the health of bathers as referred to in Regulation 15, Schedule 3 and column A of Schedule 4;

“set of bathing water quality data” means data compiled in accordance with Regulations 7 and 10;

“short-term pollution” means microbiological contamination as referred to in Schedule 4, column A that has clearly identifiable causes, is not normally expected to affect bathing water quality for more than approximately 72 hours after the bathing water quality is first affected and for which the relevant local authority has established procedures to predict and deal with as set out in Schedule 6.

Application

3. These Regulations do not apply to—

- (a) swimming pools and spa pools;
- (b) confined waters subject to treatment or used for therapeutic purposes, or
- (c) artificially created confined waters separated from surface water and groundwater.

Identification of bathing waters

4. (1) A local authority shall, in accordance with this Regulation, on or before 24 March in each year identify all bathing waters in relation to the bathing season in that year and shall notify the EPA, in such form and in such manner as may be specified by the EPA, of the bathing waters so identified including the reason for any change compared to the previous year.

(2) The bathing waters to be identified by a local authority shall be all elements of surface water where the authority expects a large number of people to bathe and where such water—

- (a) lies within the functional area of the authority, or
- (b) is immediately contiguous to the functional area of the local authority and does not lie within the functional area of any local authority.

(3) The bathing waters to be identified by a local authority in respect of a bathing season shall not include any waters in relation to which the authority has issued a permanent prohibition or advice against bathing, and such prohibition or advice relates to the whole bathing season.

(4) A local authority shall take appropriate measures in accordance with Regulation 17 for public participation in the identification of bathing waters.

(5) (a) A local authority, or two or more local authorities acting by agreement, may subdivide or, subject to subparagraph (b), group together existing bathing waters in the light of the bathing water quality assessments carried out in accordance with Regulation 11.

(b) Bathing waters shall not be grouped together unless those waters—

- (i) are contiguous;
- (ii) received similar assessments for the preceding four years in accordance with paragraphs (1), (2), (3) and (4)(c) of Regulation 11, and
- (iii) have bathing water profiles established in accordance with Regulation 5 all of which identify common risk factors or the absence thereof.

(6) In this Regulation “large number” means, in relation to bathers, a number that the local authority considers to be large having regard, in particular, to past trends or to any infrastructure or facilities provided, or other measures taken, to promote bathing.

(7) Bathing waters shall be first identified and notified to the EPA by a local authority in accordance this Regulation not later than 24 March 2011.

Bathing water profile

5. (1) A local authority shall, in relation to each bathing water identified by the authority in accordance with Regulation 4, establish a bathing water profile in accordance with this Regulation and Schedule 1 and shall send a copy of the profile to the EPA in such form and in such manner as may be specified by the EPA.

(2) A bathing water profile may cover one bathing water or two or more contiguous bathing waters.

(3) A bathing water profile shall be reviewed and updated by a local authority in accordance with Schedule 1 and, following each such review, the local authority shall send to the EPA, in such form and manner as may be specified by the EPA, a report of the review and, where applicable, the updated bathing water profile.

(4) Where it is necessary in accordance with Schedule 1 to review or update a bathing water profile in any year, a local authority shall, as far as is practicable, not later than 24 March in that year—

(a) carry out the review and update, and

(b) send a report of the review and, where appropriate, a copy of the updated profile to the EPA.

(5) A report of a review shall indicate the measures taken to improve water quality at a bathing water during the period since the most recent review or update of the bathing water profile, the effectiveness of those measures and the basis for any additional measures proposed.

(6) A bathing water profile shall be first established in accordance with this Regulation by a local authority, and a copy of the profile sent by the authority to the EPA, not later than 24 March 2011 in relation to each bathing water

identified by the authority on or before that day in accordance with Regulation 4.

Monitoring calendar

6. (1) A local authority shall, on or before 24 March in each year in relation to each bathing water identified by the authority in accordance with Regulation 4, establish a monitoring calendar in accordance with this Regulation and Schedule 2 and send a copy of the calendar to the EPA in such form and such manner as may be specified by the EPA.

(2) A monitoring calendar shall be first established in accordance with this Regulation by a local authority, and a copy of the calendar sent by the authority to the EPA, not later than 24 March 2011 in relation to each bathing water identified by the authority on or before that day in accordance with Regulation 4.

Duty of local authority to monitor bathing water

7. (1) A local authority shall, in relation to each bathing water identified by the authority in accordance with Regulation 4, carry out the monitoring, inspections and investigations specified in Schedule 3 and shall compile sets of bathing water quality data on the basis of such monitoring in such form and manner as may be specified by the EPA.

(2) The monitoring specified in paragraph (1) shall, subject to Regulation 8 and Schedule 2, be carried out in relation to a bathing water in accordance with the monitoring calendar established for that bathing water.

(3) The monitoring point in a bathing water shall be the location within the bathing water where—

(a) most bathers are expected, or

(b) the greatest risk of pollution is expected in accordance with the bathing water profile.

(4) Samples taken during short-term pollution may be disregarded and, where samples are so disregarded, they shall be replaced by samples taken in accordance with Schedule 2.

(5) A local authority shall, in addition to the monitoring specified in paragraph (1), carry out such additional monitoring in relation to bathing waters as may be specified by the EPA in accordance with Regulation 20 and shall compile sets of bathing water quality on the basis of the results of such monitoring in such form and manner as may be specified by the EPA.

(6) The monitoring of bathing waters in accordance with this Regulation shall be first carried out in relation to a bathing season not later than the bathing season in the year 2011.

Suspension of monitoring in abnormal situation

8. (1) A local authority may, with the approval of the EPA, suspend the monitoring calendar during abnormal situations.

(2) Where a monitoring calendar is suspended in an abnormal situation it shall be resumed as soon as possible after the end of that situation.

(3) New samples shall be taken as soon as possible after the end of an abnormal situation to replace samples that are missing due to that situation.

(4) A local authority shall ensure, in accordance with Regulation 18(1), that information in relation to the suspension and the abnormal situation is actively disseminated and promptly made available during the bathing season in an easily accessible place in the near vicinity of the bathing water.

Analysis of water samples

9. (1) A local authority shall, subject to paragraph (2), ensure that the analysis of bathing water quality takes place in accordance with the reference methods specified in Schedule 4 and the rules specified in Schedule 5.

(2) A local authority may, with the approval of the EPA, use reference methods or rules for the analysis of bathing water quality other than the methods specified in Schedule 4 or rules specified in Schedule 5.

(3) The EPA shall not grant approval to a local authority for the use of other methods or rules for the analysis of bathing water quality unless the EPA is satisfied that those other methods will provide results which are equivalent to those which would be obtained using the methods specified in Schedule 4 and the rules specified in Schedule 5.

Water quality data to be reported and compiled

10. (1) A local authority shall send to the EPA not later than 15 October in each year the results of the monitoring, investigations and inspections carried out in relation to each bathing water by the authority during that year.

(2) The information to be sent to the EPA by a local authority in accordance with paragraph (1) shall be provided in such form and manner as may be specified by the EPA.

(3) The EPA shall compile sets of bathing water quality data on the basis of the results supplied by local authorities in accordance with this Regulation.

Assessment of water quality

11. (1) The EPA shall, subject to this Regulation, carry out an assessment—

(a) in relation to each bathing water;

(b) after the end of each bathing season;

- (c) on the basis of sets of bathing water quality data comprising at least 16 samples or, in the case of a bathing water situated in a region subject to special geographical constraints, 12 samples, and
 - (d) in accordance with the procedures set out in Schedule 6.
- (2) Subject to paragraphs (3) and (4), a bathing water quality assessment in any year shall be carried out on the basis of the sets of bathing water quality data compiled in relation to the bathing season in that year and the three preceding bathing seasons.
- (3) (a) Assessments of the quality of bathing waters may be carried out by the EPA in any year on the basis of the sets of bathing water quality data compiled in relation to the bathing season in that year and the two preceding bathing seasons provided that—
- (i) the EPA has notified the Commission before the carrying out of the assessments, and
 - (ii) the EPA has not changed the applicable assessment period within the previous five years.
- (b) Where the EPA carries out assessments of the quality of bathing waters on the basis of the data for three bathing seasons in accordance with subparagraph (a), it may revert to the assessment of bathing waters on the basis of the data for four bathing seasons in accordance with paragraph (2) provided that—
- (i) the EPA has notified the Commission before the carrying out of the assessments on the basis of four bathing seasons, and
 - (ii) the EPA has not changed the applicable assessment period within the previous five years.
- (4) A bathing water quality assessment may be carried out in relation to a bathing water on the basis of a set of bathing water quality data relating to fewer than four bathing seasons in case where—
- (a) the bathing water is newly identified, or
 - (b) any changes have occurred that are likely to affect the classification of the bathing water in accordance with Regulation 12, in which case the assessment shall be carried out on the basis of a set of bathing water quality data consisting solely of the results for samples collected since the changes occurred, or
 - (c) the bathing water has already been assessed in accordance with the 1992 Regulations, in which case equivalent data gathered under those Regulations shall be used and, for this purpose, the parameters faecal coliforms and faecal streptococci shall be deemed to be equivalent, respectively, to the parameters *Escherichia coli* and intestinal enterococci.

Classification of bathing water

12. (1) The EPA shall, subject to paragraph (2) and on the basis of the assessment of bathing water quality carried out in accordance with Regulation 11, classify each bathing water as “poor”, “sufficient”, “good” or “excellent” in accordance with the criteria set out in Schedule 6 on or before 31 December in each year in relation to the preceding bathing season.

(2) The EPA shall first classify bathing waters in accordance with this Regulation on or before 15 September 2015.

Bathing water quality status to be achieved

13. (1) A local authority shall, subject to Regulations 14 and 15, ensure that the quality of all bathing waters identified by the authority in accordance with Regulation 4 shall be classified as having water quality status not less than “sufficient” by 15 September 2015.

(2) A local authority shall, subject to Regulations 14 and 15, take all such realistic and proportionate measures as they consider appropriate with a view to increasing the number of bathing waters classified as “good” or “excellent”.

Measures to be taken regarding “poor” bathing water

14. (1) A local authority shall not be in contravention of Regulation 13 in respect of a bathing water which is classified as “poor” in case where all the following measures are taken in relation to that bathing water with effect from the bathing season that follows the classification—

- (a) adequate management measures, including the issue of a bathing prohibition or advice against bathing, with a view to preventing the exposure of bathers to pollution;
- (b) identification of the causes and reasons for the failure to achieve at least “sufficient” quality status;
- (c) adequate measures to prevent, reduce or eliminate the causes of pollution;
- (d) in accordance with Regulation 18(2), alerting the public by a clear and simple warning sign and informing them of the causes of the pollution and measures taken, on the basis of the bathing water profile.

(2) A local authority shall not be in contravention of Regulation 13 in respect of a bathing water which is the subject of a permanent bathing prohibition or advice against bathing issued in accordance with paragraph (3) or (4).

(3) A local authority shall issue a permanent bathing prohibition or advice against bathing in relation to a bathing water that has been classified as “poor” for five consecutive years.

(4) A local authority may, with the approval of the EPA, issue a permanent bathing prohibition or advice against bathing in relation to a bathing water that has been classified as “poor” in case where the authority considers that the

achievement of the quality status “sufficient” would be infeasible or disproportionately expensive.

(5) A local authority shall notify the EPA promptly of the issue by the authority of a permanent bathing prohibition or advice against bathing in relation to any bathing water.

Management measures in certain circumstances

15. (1) A local authority shall ensure that timely and adequate management measures, including the provision of information to the public, are taken when they are aware of unexpected situations that have, or could reasonably be expected to have, an adverse impact on bathing water quality and on the health of bathers and such measures shall, if necessary, include a temporary bathing prohibition or advice against bathing.

(2) Where cyanobacterial proliferation occurs and a health risk has been identified or presumed, adequate management measures, including the provision of information to the public, shall be taken immediately by a local authority to prevent exposure of bathers to risk.

(3) Where a bathing water profile indicates a tendency for proliferation of macro-algae or marine phytoplankton, adequate management measures, including the provision of information to the public, shall be taken by the relevant local authority.

(4) Where pollution such as tarry residues, glass, plastic, rubber or any other waste is found in a bathing water, adequate management measures shall be taken and shall include, if necessary, information to the public.

(5) A local authority shall promptly notify the EPA and the Health Service Executive of any situation that has, or could reasonably be expected to have, an adverse impact on bathing water quality and on the health of bathers.

Management measures to be reported

16. (1) A local authority shall send to the EPA not later than 15 October in each year a report of the management measures taken in relation to each bathing water in accordance with Regulations 4 to 9, 13(2), 14, 15, 17, 18 and 22 and Schedule 6.

(2) A report sent to the EPA in accordance with paragraph (1) shall be provided in such form and manner as may be specified by the EPA.

Public participation

17. (1) A local authority shall encourage public participation in the implementation of these Regulations and shall ensure the provision of opportunities for the public concerned—

(a) to find out how to participate, and

(b) to formulate suggestions, remarks or complaints.

(2) Without prejudice to the generality of paragraph (1), a local authority shall encourage public participation in relation to the establishment, review and updating of lists of bathing waters in accordance with Regulation 4.

(3) A local authority shall take due account of any information obtained in the context of public participation.

Information to the public

18. (1) A local authority shall ensure that the following information is actively disseminated and promptly made available during the bathing season in an easily accessible place in the near vicinity of the bathing water:

- (a) the current bathing water classification and any prohibition or advice against bathing referred to in this Regulation by means of a clear and simple sign or symbol;
- (b) a general description of the bathing water, in non-technical language, based on the bathing water profile established in accordance with Regulation 5;
- (c) in the case of bathing water subject to short-term pollution—
 - (i) notification that the bathing water is subject to short-term pollution;
 - (ii) an indication of the number of days on which bathing was prohibited or advised against during the preceding bathing season because of such pollution, and
 - (iii) a warning whenever such pollution is present or predicted;
- (d) information on the nature and expected duration of abnormal situations during such events;
- (e) whenever bathing is prohibited or advised against, a notice advising the public and giving reasons;
- (f) whenever a permanent bathing prohibition or advice against bathing is introduced, the fact that the area concerned is no longer a bathing water and the reasons for its declassification;
- (g) an indication of sources of more complete information in accordance with paragraph (2).

(2) A local authority shall use appropriate media and technologies, including the Internet, to disseminate actively and promptly the information concerning bathing waters specified in paragraph (1) and also the following information in several languages where appropriate—

- (a) a list of bathing waters;

- (b) the classification of each bathing water over the last three years and its bathing water profile, including the results of monitoring carried out in accordance with these Regulations since the most recent classification;
 - (c) in the case of bathing waters classified as being at water quality status “poor”, information on the causes of pollution and measures taken with a view to preventing the exposure of bathers to pollution and to tackle its causes as specified in Regulation 14;
 - (d) in the case of bathing waters subject to short-term pollution, general information on—
 - (i) conditions likely to lead to short-term pollution;
 - (ii) the likelihood of such pollution and its likely duration, and
 - (iii) the causes of the pollution and measures taken with a view to preventing the exposure of bathers to pollution and to tackle its causes.
- (3) The list of bathing waters specified in paragraph (2)(a) shall be made available before the start of the bathing season.
- (4) The results of monitoring specified in paragraph (2)(b) shall be made available on the Internet upon completion of the analysis of the relevant water samples.
- (5) A local authority shall, wherever possible, provide information to the public using georeferenced technology and present it in a clear and coherent manner, in particular through the use of signs and symbols.
- (6) The information to be disseminated by a local authority in accordance with paragraph (2) may be disseminated by the authority or, with the consent of the authority, by the EPA on behalf of the authority.
- (7) The information specified in paragraphs (1) and (2) shall, with effect from 1 June 2012, be disseminated as soon as it becomes available.

Reports to the Commission

19. (1) The EPA shall notify the Commission before 1 June each year of all waters identified as bathing waters for that year including the reason for any change compared to the previous year.
- (2) The EPA shall, in relation to each bathing water, provide the Commission before 31 December each year with—
- (a) the results of the monitoring for the preceding bathing season;
 - (b) the bathing water quality assessment;
 - (c) a description of the significant management measures taken;

- (d) notice of any suspension of a monitoring calendar approved by the EPA in accordance with Regulation 8 and the reasons for each such suspension, and
 - (e) all relevant information about methods or rules approved by the EPA in accordance with Regulation 9(2) for the analysis of bathing water quality other than the methods and rules specified in Regulation 9(1) and their equivalence.
- (3) The first report to be sent to the Commission—
- (a) in accordance with paragraph (1) shall be sent not later than 1 June 2008, and
 - (b) in accordance with paragraph (2) shall be sent as soon as may be after an assessment has been carried out in accordance with Regulation 11 in relation to the bathing water.

Advice, recommendations and directions by EPA

20. (1) The EPA may give such advice, recommendations and directions to a local authority as it considers necessary for the purposes of promoting the consistent and effective implementation of these Regulations or the proper monitoring and management of bathing waters.

(2) A local authority shall have regard to any advice or recommendations, and shall comply with any directions, given by the EPA in accordance with paragraph (1).

General policy directions by Minister

21. (1) The Minister may give general directions in writing to the EPA or to a local authority in relation to the performance by the EPA or the authority of its functions under these Regulations and, in performing those functions, the EPA or authority, as the case may be, shall have regard to those directions.

(2) Paragraph (1) shall not be construed as enabling the Minister to exercise any power or control in relation to the performance in particular circumstances by the EPA or a local authority of a function conferred on it by these Regulations.

Private operators

22. (1) A local authority may serve notice on a private operator directing that operator to take such measures as may be specified in the notice in relation to the relevant bathing water and the period within which such measures are to be taken.

(2) It shall be the duty of a private operator to comply with the terms of a notice issued in accordance with paragraph (1).

(3) The measures specified in a notice issued to a private operator in accordance with paragraph (1) may include any measures required by these Regulations to be taken by a local authority in relation to a bathing water.

(4) A private operator shall, to such extent as may be requested by the authority or the EPA, pay to a local authority or the EPA the amount of any expenditure reasonably incurred by the local authority or the EPA, as the case may be, under these Regulations in relation to the relevant bathing water and, in default of such payment, the amount may be recovered from the private operator by the authority or the EPA, as the case may be, as a simple contract debt in any court of competent jurisdiction.

(5) In this Regulation—

- (a) “private operator”, in relation to a bathing water, means a person other than a local authority who has control of the land which is—
 - (i) normally used to access the bathing water from the landward side, and
 - (ii) immediately adjacent to the bathing water or, in the case of bathing water which is tidal, immediately above the high water mark;
- (b) “relevant bathing water”, in relation to a private operator, means the bathing water to which access is normally gained by use of land controlled by that private operator.

Offences and applications to court

23. (1) Where a local authority or a private operator (within the meaning of Regulation 22) contravenes or fails to comply with a requirement of these Regulations, the authority or the private operator, as the case may be, shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding €5,000, and
- (b) on conviction on indictment, to a fine not exceeding €500,000.

(2) A summary prosecution for an offence under these Regulations may be taken by the EPA or by a local authority.

- (3) (a) Where on application by motion by any person to the District Court, Circuit Court or the High Court, the court hearing the application is satisfied that a person has failed or is failing to comply with a provision of these Regulations, the court may by order—
 - (i) direct the person to comply with the provision,
 - (ii) make such other provision, including provision in relation to the payment of costs, as the court considers appropriate, and
 - (iii) make such interim or interlocutory order as it considers appropriate.
- (b) An application for an order under this Regulation may be made whether or not there has been a prosecution for an offence under

these Regulations in relation to the relevant failure of compliance and shall not prejudice the initiation of a prosecution for an offence under these Regulations in relation to the failure of compliance.

Co-operation on transboundary waters

24. Wherever a river basin gives rise to transboundary impacts on water quality, the Minister, the EPA and the relevant local authorities shall co-operate as appropriate in the implementation of the Directive, including through the appropriate exchange of information and joint action to control those impacts.

Application of other enactments

25. (1) The powers, duties and functions assigned to a local authority or the EPA by these Regulations are additional to, and not in substitution for, the powers, duties and functions assigned by the Local Government (Water Pollution) Acts 1977 and 1990, the Environmental Protection Agency Acts 1992 and 2003 or any other statute.

(2) Sections 28 and 30 of the Local Government (Water Pollution) Act, 1977 (No. 1 of 1977) and sections 23, 26 and 28 of the Local Government (Water Pollution)(Amendment) Act, 1990 (No. 21 of 1990) shall apply in relation to these Regulations and for this purpose these Regulations shall be deemed to have been made under those Acts.

Public safety measures

26. The provision by a local authority of lifeguard services, life-saving equipment or other services or facilities to protect public safety or public health shall not be regarded as measures to promote bathing.

Transitional provisions

27. (1) The waters at a bathing area specified in the First Schedule to the 1992 Regulations shall, in the period prior to the first identification of bathing waters by a local authority in accordance with Regulation 4, be deemed to be bathing waters identified for the purposes of these Regulations by the local authority specified in that Schedule as the responsible authority for the relevant area.

(2) In the period prior to the first establishment of a monitoring calendar in relation to a bathing water in accordance with Regulation 6, monitoring shall commence each year with the taking of samples in mid-May and shall continue to the end of August with samples being taken at frequencies which comply with Article 4(5) of the 1992 Regulations.

(3) When monitoring of bathing waters has started under these Regulations, annual reporting to the Commission in accordance with Regulation 19(2) shall continue to take place pursuant to Directive 76/160/EEC¹ until a first assessment can be made in accordance with Regulation 11 and during this period—

(a) the parameter total coliforms shall not be taken into account, and

¹OJ L 031, 05.02.1976, p. 1-7

- (b) the parameters faecal coliforms and faecal streptococci shall be deemed to be equivalent, respectively, to the parameters *Escherichia coli* and intestinal enterococci.

Revocations

- 28. The 1992 Regulations are revoked with effect from 31 December 2014.

SCHEDULE 1

Regulation 5.

BATHING WATER PROFILE

1. The bathing water profile referred to in Regulation 5 is to consist of:
 - (a) a description of the physical, geographical and hydrological characteristics of the bathing water, and of other surface waters in the catchment area of the bathing water concerned, that could be a source of pollution, which are relevant to the purpose of this Directive and as provided for in Directive 2000/60/EC;
 - (b) an identification and assessment of causes of pollution that might affect bathing waters and impair bathers' health;
 - (c) an assessment of the potential for proliferation of cyanobacteria;
 - (d) an assessment of the potential for proliferation of macro-algae or phytoplankton;
 - (e) if the assessment under point (b) shows that there is a risk of short-term pollution, the following information:
 - the anticipated nature, frequency and duration of expected short-term pollution;
 - details of any remaining causes of pollution, including management measures taken and the time schedule for their elimination;
 - management measures taken during short-term pollution and the identity and contact details of bodies responsible for taking such action;
 - (f) the location of the monitoring point.

2. In the case of bathing waters classified as “good”, “sufficient” or “poor”, the bathing water profile is to be reviewed regularly to assess whether any of the aspects listed in paragraph 1 have changed. If necessary, it is to be updated. The frequency and scope of reviews is to be determined on the basis of the nature and severity of the pollution. However, they are to comply with at least the provisions and to take place with at least the frequency specified in the following table:

Bathing water classification	Good	Sufficient	Poor
Reviews are to take place at least every	four years	three years	two years
Aspects to be reviewed (points of paragraph 1)	(a) to (f)	(a) to (f)	(a) to (f)

In the case of bathing waters previously classified as “excellent”, the bathing water profiles need be reviewed and, if necessary, updated only if the classification changes to “good”, “sufficient” or “poor”. The review is to cover all aspects mentioned in paragraph 1.

3. In the event of significant construction works or significant changes in the infrastructure in or in the vicinity of the bathing water, the bathing water profile is to be updated before the start of the next bathing season.

4. The information referred to in paragraph 1(*a*) and (*b*) is to be provided on a detailed map whenever practicable.

5. Other relevant information may be attached or included if the local authority considers it appropriate.

6. When establishing, reviewing or updating a bathing water profile, adequate use shall be made of data obtained from monitoring and assessments carried out in accordance with the European Communities (Water Policy) Regulations, 2003 (S.I. No. 722 of 2003) or otherwise pursuant to Directive 2000/60/EC.

7. A bathing water profile shall contain such other information as the relevant local authority considers appropriate.

SCHEDULE 2

Regulation 6.

MONITORING CALENDAR AND SAMPLING

1. One sample is to be taken shortly before the start of each bathing season. Taking account of this extra sample and subject to paragraph 2, no fewer than four samples are to be taken and analysed per bathing season.
2. Only three samples need be taken and analysed per bathing season in the case of a bathing water that is situated in a region which, in the opinion of the EPA, is subject to special geographical constraints.
3. Sampling dates are to be distributed throughout the bathing season, with the interval between sampling dates never exceeding one month.
4. Monitoring shall take place no later than four days after the date specified in the monitoring calendar.
5. In the event of short-term pollution, one additional sample is to be taken to confirm that the incident has ended. This sample is not to be part of the set of bathing water quality data. If necessary to replace a disregarded sample, an additional sample is to be taken seven days after the end of the short-term pollution.

SCHEDULE 3

MONITORING, INSPECTIONS AND INVESTIGATIONS TO BE
CARRIED OUT

1. Bathing waters shall be monitored in respect of the parameters intestinal enterococci and escherichia coli.
2. Bathing waters shall be inspected visually for pollution such as tarry residues, glass, plastic, rubber or any other waste.
3. Where the bathing water profile established in relation to a bathing water indicates a potential for cyanobacterial proliferation, a local authority shall carry out appropriate monitoring to enable timely identification of health risks.
4. Where the bathing water profile established in relation to a bathing water indicates a tendency for proliferation of macro-algae or marine phytoplankton, a local authority shall undertake investigations to determine their acceptability and health risks.

SCHEDULE 4

Regulation 9.

PARAMETERS AND REFERENCE METHODS

For inland waters

	A	B	C	D	E
	Parameter	Excellent quality	Good quality	Sufficient quality	Reference methods of analysis
1	Intestinal enterococci (cfu/100 ml)	200 (*)	400 (*)	330 (**)	ISO 7899-1 or ISO 7899-2
2	Escherichia coli (cfu/100ml)	500(*)	1,000(*)	900 (**)	ISO 9308-3 or ISO 9308-1

(*) Based upon a 95-percentile evaluation. See Schedule 6.

(**) Based upon a 90-percentile evaluation. See Schedule 6.

For coastal waters and transitional waters

	A	B	C	D	E
	Parameter	Excellent quality	Good quality	Sufficient quality	Reference methods of analysis
1	Intestinal enterococci (cfu/100 ml)	100 (*)	200 (*)	185 (**)	ISO 7899-1 or ISO 7899-2
2	Escherichia coli (cfu/100ml)	250(*)	500 (*)	500 (**)	ISO 9308-3 or ISO 9308-1

(*) Based upon a 95-percentile evaluation. See Schedule 6.

(**) Based upon a 90-percentile evaluation. See Schedule 6.

SCHEDULE 5

RULES ON THE HANDLING OF SAMPLES FOR MICROBIOLOGICAL ANALYSES

1. Sampling point

Where possible, samples are to be taken 30 centimetres below the water's surface and in water that is at least one metre deep.

2. Sterilisation of sample bottles

Sample bottles are:

- to undergo sterilisation in an autoclave for at least 15 minutes at 121 °C, or
- to undergo dry sterilisation at between 160 °C and 170 °C for at least one hour, or
- to be irradiated sample containers obtained directly from manufacturer.

3. Sampling

The volume of the sampling bottle/container is to depend on the quantity of water needed for each parameter to be tested. The minimum content is generally to be 250 ml.

Sample containers are to be of transparent and non-coloured material (glass, polyethene or polypropylene).

In order to prevent accidental contamination of the sample, the sampler is to employ an aseptic technique to maintain the sterility of the sample bottles. There is no further need for sterile equipment (such as sterile surgical gloves or tongs or sample pole) if this is done properly.

The sample is to be clearly identified in indelible ink on the sample container and on the sampling form.

4. Storage and transport of samples before analysis

Water samples are to be protected at all stages of transport from exposure to light, in particular direct sunlight.

The sample is to be conserved at a temperature of around 4 °C, in a cool box or refrigerator (depending on climate) until arrival at the laboratory. If the transport to the laboratory is likely to take more than four hours, then transport in a refrigerator is required.

The time between sampling and analysis is to be kept as short as possible. Samples are to be analysed on the same working day where possible. If this is not possible for practical reasons, then the samples shall be processed within no more than 24 hours. In the meantime, they shall be stored in the dark and at a temperature of 4 °C ± 3 °C.

SCHEDULE 6

Regulation 11.

BATHING WATER ASSESSMENT AND CLASSIFICATION

1. Poor quality

Bathing waters are to be classified as “poor” if, in the set of bathing water quality data for the last assessment period ^(a), the percentile values ^(b) for microbiological enumerations are worse ^(c) than the “sufficient quality” values set out in Schedule 4, column D.

2. Sufficient quality

Bathing waters are to be classified as “sufficient”:

1. if, in the set of bathing water quality data for the last assessment period, the percentile values for microbiological enumerations are equal to or better ^(d) than the “sufficient” values set out in Schedule 4, column D; and

2. if the bathing water is subject to short-term pollution, on condition that:

- (i) adequate management measures are being taken, including surveillance, early warning systems and monitoring, with a view to preventing bathers’ exposure by means of a warning or, where necessary, a bathing prohibition;
- (ii) adequate management measures are being taken to prevent, reduce or eliminate the causes of pollution; and
- (iii) the number of samples disregarded in accordance with Regulation 7(4) because of short-term pollution during the last assessment period represented no more than 15% of the total number of samples provided for in the monitoring calendars established for that period, or no more than one sample per bathing season, whichever is the greater.

3. Good quality

Bathing waters are to be classified as “good”:

1. if, in the set of bathing water quality data for the last assessment period, the percentile values for microbiological enumerations are equal to or better ^(d) than the “good quality” values set out in Schedule 4, column C; and

2. if the bathing water is subject to short-term pollution, on condition that:

- (i) adequate management measures are being taken, including surveillance, early warning systems and monitoring, with a view to preventing bathers’ exposure, by means of a warning or, where necessary, a bathing prohibition;

- (ii) adequate management measures are being taken to prevent, reduce or eliminate the causes of pollution; and
- (iii) the number of samples disregarded in accordance with Regulation 7(4) because of short-term pollution during the last assessment period represented no more than 15% of the total number of samples provided for in the monitoring calendars established for that period, or no more than one sample per bathing season, whichever is the greater.

4. Excellent quality

Bathing waters are to be classified as “excellent”:

1. if, in the set of bathing water quality data for the last assessment period, the percentile values for microbiological enumerations are equal to or better than the “excellent quality” values set out in Schedule 4, column B; and
2. if the bathing water is subject to short-term pollution, on condition that:
 - (i) adequate management measures are being taken, including surveillance, early warning systems monitoring, with a view to preventing bathers’ exposure, by means of warning or, where necessary, a bathing prohibition;
 - (ii) adequate management measures are being taken to prevent, reduce or eliminate the causes of pollution; and
 - (iii) the number of samples disregarded in accordance with Regulation 7(4) because of short-term pollution during the last assessment period represented no more than 15% of the total number of samples provided for in the monitoring calendars established for that period, or no more than one sample per bathing season, whichever is the greater.

NOTES

- (^a) ‘Last assessment period’ means the last four bathing seasons or, when applicable, the period specified in Regulation 11(3) or (4).
- (^b) Based upon percentile evaluation of the \log_{10} normal probability density function of microbiological data acquired from the particular bathing water, the percentile value is derived as follows:
 - (i) take the \log_{10} value of all bacterial enumerations in the data sequence to be evaluated. (If a zero value is obtained, take the \log_{10} value of the minimum detection limit of the analytical method used instead.)
 - (ii) calculate the arithmetic mean of the \log_{10} values (μ)
 - (iii) calculate the standard deviation of the \log_{10} values (σ)

The upper 90-percentile point of the data probability density function is derived from the following equation: upper 90-percentile = antilog ($\mu + 1,282 \sigma$).

The upper 95-percentile point of the data probability density function is derived from the following equation: upper 95-percentile = antilog ($\mu + 1,65 \sigma$).

- (c) 'Worse' means with higher concentration values expressed in cfu/100 ml.
- (d) 'Better' means with lower concentration values expressed in cfu/100 ml.



GIVEN under the Official Seal of the Minister for the Environment,
Heritage and Local Government
20 March 2008

JOHN GORMLEY
Minister for the Environment, Heritage and Local
Government

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations provide for transposition of the EU Bathing Water Directive 2006 (Directive 2006/7/EC of 15 February 2006) which aims—

- to improve health protection for bathers
- to establish a more pro-active approach to management of bathing waters, and
- to promote increased public involvement and dissemination of information to the public.

The Regulations establish a new classification system for bathing water quality based on four classifications “poor”, “sufficient”, “good” and “excellent” and generally require that a classification of at least “sufficient” be achieved by 2015 for all bathing waters. Local authorities must take appropriate measures with a view to improving waters which are classified as “poor” and increasing the number of bathing waters classified as “good” or “excellent”. A permanent advice against bathing must be issued in a case where a bathing water is classified as “poor” for five consecutive years. Local authorities are required annually to identify bathing waters, establish a monitoring calendar, carry out the specified monitoring, report the results to the EPA, carry out appropriate management measures where necessary and provide information to the public. There must be public participation in the identification of waters and the general implementation of the Regulations. The EPA is required by the Regulations to classify bathing waters, generally on the basis of the monitoring results for the four preceding bathing seasons, and to publish an annual report in relation to bathing water quality. Monitoring by local authorities is to commence not later than 2011 with a view to ensuring that a classification is assigned to bathing waters not later than 2015. Private controllers of access lands may be required to contribute towards the costs incurred by a local authority or the EPA.

The Regulations will repeal and replace the Quality of Bathing Waters Regulations, 1992 (S.I. No. 155 of 1992) with effect from 31 December 2014.

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