
**ENVIRONMENT (QUALITY OF BATHING WATER)
REGULATIONS 2009**

This version is out of date

**Subsidiary
2009/033**

Subsidiary Legislation made under s. 18(c).

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(LN. 2009/033)

Commencement **4.6.2009** rr. 1, 2 to 6, 10, 12, 13
and 17

EU Legislation/International Agreements involved:

Directive 76/160/EEC

Directive 2006/7/EC

Directive 2008/99/EC

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In exercise of the powers conferred upon it by section 18(c) of the Environment Act 2005 the Government has, for the purpose of transposing Directive 2006/7/EC of the European Parliament and of the Council concerning the management of bathing water quality and repealing Directive 76/160/EEC into the law of Gibraltar, made the following Regulations—

**PART 1
PRELIMINARY**

Title and commencement.

1.(1) These Regulations may be cited as the Environment (Quality of Bathing Water) Regulations 2009 and come into operation in accordance with subregulations (2) to (4).

(2) This regulation, and regulations 2 to 6, 10, 12, 13 and 17 come into operation on the day of publication of these Regulations.

(3) Regulations 7 to 9, 11, 24, 26 and 27 come into operation on 24th March 2011.

(4) All remaining regulations come into operation on 24th March 2015.

Interpretation.

2. In these Regulations—

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

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

“bathing water” means any surface water designated by the competent authority under regulation 3;

“bathing water quality assessment” means the process of evaluating bathing water quality, using the assessment method defined in regulation 22 ;

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

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

“coastal water” means surface water on the landward side of a line every point of which is at a distance of one nautical mile on the seaward side from the nearest point of the baseline from which the breadth of the territorial waters;

“competent authority” means the Minister;

“control”, in relation to bathing water, means control of the land immediately adjacent to the beach or bank that is normally used to access the bathing water from the landward side and, where the bathing water is tidal, control of such land above the high water mark;

“controller” means any person or body corporate, whether public or private, who controls bathing water;

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

“groundwater” means all water that is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil;

“inland water” means all standing and flowing water on the surface of the land, and all groundwater on the landward side of the baseline from which the breadth of the territorial waters is measured;

“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 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 bathers' health;

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- (g) giving information to the public;
- (h) taking action to prevent bathers' exposure to pollution; and
- (i) taking action to reduce the risk of pollution;

“Minister” means the Minister with responsibility for the environment;

“permanent advice against bathing” means advice issued, in relation to at least one whole bathing season, under regulation 25;

“pollution” means contamination that affects bathing water quality and presents a risk to bathers’ health from the following—

- (a) intestinal enterococci;
- (b) *Escherichia coli*;
- (c) cyanobacterial proliferation;
- (d) a proliferation of macro-algae or marine phytoplankton; or
- (e) other pollution, including tarry residues, glass, plastic, rubber or any other waste;

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

- (a) management measures;
- (b) the establishment of surveillance and early warning systems with a view to preventing bathers’ exposure to the short-term pollution by means of public information under regulation 11; and
- (c) measures in relation to bathing water taken by the competent authority under regulation 5 to prevent or eliminate the causes of the short-term pollution;

“set of bathing water quality data” means data obtained from results of samples taken under regulations 12 to 18;

“short-term pollution” means microbiological contamination by intestinal enterococci or *Escherichia coli* where contamination to affect

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bathing water quality for more than approximately 72 hours after the bathing water is first affected would not normally be expected;

“surface water” means inland waters, except groundwater; transitional waters and coastal waters except in respect of chemical status for which it shall also include territorial waters;

“Water Framework Directive” means Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy.

(2) The Minister may designate any person or body to carry out any function or functions vested in him as the competent authority under these Regulations, and references to the competent authority in these Regulations includes a reference to any such person or body.

Designation of bathing waters.

3.(1) Subject to regulation 6, the competent authority shall establish, and keep annually under review, a list of bathing waters in Gibraltar designated under this regulation.

(2) The competent authority shall designate an area of surface water as bathing water if—

- (a) he expects a large number of people to bathe there, having regard, in particular, to—
 - (i) past trends; or
 - (ii) infrastructure or facilities provided, or other measures taken, to promote bathing there ; and
- (b) permanent advice against bathing there has not been issued.

(3) Subregulation (2) does not apply to—

- (a) swimming pools;
- (b) spa pools;
- (c) confined waters which are—
 - (i) subject to treatment such as disinfection; or

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- (ii) used for therapeutic purposes;
 - (d) artificially created confined waters separated from surface water or groundwater.
- (4) The competent authority may–
- (a) subdivide existing bathing waters in the light of the bathing water quality assessments carried out under regulation 22; 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 common pollution risk factors.
- (5) The competent authority shall publish and update the list of bathing waters designated under this regulation.

Determination of the length of the bathing season.

4.(1) The competent authority shall determine the length of the bathing season for every year in Gibraltar.

(2) The bathing season referred to in subregulation (1) is the period during which the competent authority expects large numbers of people to bathe in bathing waters having regard to the indicators set out in paragraph (a) of regulation 3 (2).

General duties.

5.(1) The competent authority or any person or body designated by the Minister under regulation 2(2) shall exercise their functions so as to secure compliance with the requirements of the Bathing Water Directive.

(2) Any person or body designated by the Minister under regulation 2(2) shall promptly provide to the Minister–

- (a) such information about the quality of bathing waters as the Minister may by notice reasonably require; and

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- (b) any information relevant to the carrying out of functions relevant to bathing water under these Regulations or other provisions of law for the time being in force which the Minister has not delegated to the person.

Public participation.

6.(1) The competent authority shall –

- (a) encourage public participation in the implementation of these Regulations; and
- (b) ensure that the public has an opportunity –
 - (i) to find out how to participate; and
 - (ii) to submit comments or complaints.

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

**PART 2
BATHING WATER PROFILES**

Bathing water profiles.

7.(1) The competent authority shall establish and keep under review a bathing water profile for every bathing water in Gibraltar in accordance with regulations 8 and 9.

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

(3) When complying with subregulation (1), the competent authority shall take into account the data which it has obtained or analysed under the Public Health (Water Framework) Rules 2004.

Contents of the bathing water profile.

8.(1) Every bathing water profile shall–

- (a) contain a description of the physical, geographical and hydrological characteristics of–

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- (i) the bathing water; and
 - (ii) any other surface water in the catchment area of the bathing water concerned 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) if the assessment under paragraph (b) indicates that there is a risk of short-term pollution and the competent authority has established relevant procedures for short-term pollution, contain—
- (i) information as to the anticipated nature, frequency and duration of expected short-term pollution;
 - (ii) details of any remaining causes of short-term pollution;
 - (iii) details of the management measures taken to eliminate the causes of the pollution and the time schedule for the elimination of the causes; and
 - (iv) information on relevant procedures for short-term pollution taken during a short-term pollution incident and the identity and contact details of any person responsible for taking such action; and
- (f) identify the location of the monitoring point.

(2) The information in subregulation (1)(a) and (b) shall be detailed on a map whenever practicable.

Review of the bathing water profile.

9.(1) Where bathing water is classified as “poor”, “sufficient” or “good” under regulation 23, the competent authority must review, and if necessary update, the bathing water profile to assess whether any of the aspects listed in regulation 8(1) have changed.

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(2) The reviews referred to in subregulation (1) shall cover all the aspects listed in regulation 8(1) and shall—

- (a) take into account the nature and severity of the pollution which affects the bathing water; and
- (b) be carried out at the following minimum frequency—
 - (i) “poor” classification, every two years;
 - (ii) “sufficient” classification, every three years; and
 - (iii) “good” classification, every four years.

(3) In the case of bathing waters previously classified as “excellent” in accordance with regulation 23, the competent authority must review, and if necessary update, the bathing water profile only if the classification changes to “poor”, “sufficient” or “good”. The review shall cover all the aspects listed in regulation 8 (1).

(4) Where there are significant construction works or infrastructure changes in or around bathing water, the competent authority shall review the bathing water profile before the start of the next bathing season.

PART 3 MONITORING OF BATHING WATERS

Monitoring of bathing waters.

10.(1) The competent authority shall establish a monitoring programme for bathing waters in Gibraltar.

- (2) The monitoring programme for—
 - (a) intestinal enterococci and *Escherichia coli* shall be in accordance with regulations 12 to 18;
 - (b) cyanobacteria shall be in accordance with regulation 19; and
 - (c) other pollution, including tarry residues, glass, plastic, rubber or any other waste shall be in accordance with regulation 20.
- (3) The competent authority shall undertake investigations for macro-algae and marine phytoplankton in accordance with regulation 21.

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Public information.

11.(1) Subregulation (2) applies in relation to every bathing water in Gibraltar.

(2) Every person who controls bathing water, shall ensure that the following information about bathing water that he controls is available during the bathing season in an easily accessible place in the vicinity of the bathing water—

- (a) the bathing water's current classification in accordance with regulation 23, where such a classification has taken place;
- (b) whether any advice against bathing there has been introduced there;
- (c) a general description of the bathing water, in non-technical language, based on its bathing water profile;
- (d) where the competent authority has established relevant procedures for short-term pollution at the bathing water—
 - (i) notification that the bathing water is affected by short-term pollution;
 - (ii) an indication of the number of days for which advice against bathing was introduced there during the immediately preceding bathing season because of short-term pollution;
 - (iii) a warning whenever short-term pollution is predicted or present there;
- (e) information on the nature and expected duration of abnormal situations there; and
- (f) an indication of the sources of more complete information published in accordance with subregulation (5).

(3) Subregulation (4) applies to every former bathing water in Gibraltar where permanent advice against bathing has been introduced.

(4) Every controller of a former bathing water shall ensure that, during the five bathing seasons that follow its re-designation, the following

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information is available during the bathing season in an easily accessible place in the vicinity of the former bathing water—

- (a) an indication that permanent advice against bathing has been introduced; and
- (b) the reasons for this.

(5) In relation to every bathing water in Gibraltar, the competent authority shall publish on the relevant website the following information—

- (a) before the start of every bathing season, the bathing water's classification in accordance with regulation 23 over the last three years;
- (b) the current bathing water profile;
- (c) as soon as possible after the completion of the analysis under regulations 12 to 21, the results of the monitoring carried out in accordance with regulation 10 since the beginning of the current bathing season;
- (d) where the competent authority has established relevant procedures for short-term pollution at the bathing water, general information on—
 - (i) the conditions likely to lead to short-term pollution there;
 - (ii) the likelihood of short-pollution there and its likely duration;
 - (iii) the causes of short-term pollution there; and
 - (iv) the relevant procedures for dealing with short-term pollution in place there; and
- (e) where the bathing water is classified as “poor” under regulation 23, information as to—
 - (i) the causes of pollution there; and
 - (ii) the additional management measures being taken there under regulation 25.

(6) Public information under these Regulations shall—

- (a) wherever possible, be provided using a geographic information system; and
- (b) be presented in a clear and coherent manner.

Location of monitoring point.

12. The competent authority shall–

- (a) locate the monitoring point at every bathing water where–
 - (i) most bathers are expected; or
 - (ii) the greatest risk of pollution is expected, according to the bathing water profile; and
- (b) where possible, take samples 30 centimetres below the water's surface and in water that is at least one metre deep.

Monitoring calendar.

13.(1) The competent authority shall–

- (a) establish a monitoring calendar for every bathing water before the start of every bathing season; 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 abnormal situations–

- (a) the competent authority may suspend the monitoring calendar for the duration of the situation; and
- (b) as soon as possible after the end of the situation, the competent authority shall take sufficient additional samples to replace those missing due to the suspension and to ensure that it has the minimum number required for the bathing water for the bathing season.

Frequency of monitoring.

14. The competent authority shall–

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- (a) take and analyse at least four samples from every bathing water during every bathing season;
- (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 intervals not exceeding one month.

Short-term pollution.

15.(1) Where, having consulted the person or the controller who controls bathing water, the competent authority has established relevant procedures for short-term pollution there, the competent authority may exclude samples taken during short-term pollution from the set of bathing water quality data for the bathing water.

(2) As soon as possible after the end of a short-term pollution incident, the competent authority shall take one additional sample in order to verify that the incident has ended.

(3) The competent authority shall not include the sample taken under subregulation (2) in the set of bathing water quality data for bathing water.

(4) Seven days after the end of a short-term pollution incident, the competent authority shall, if necessary, take an additional sample to ensure that it has the minimum number required for the bathing water for the bathing season.

Sampling equipment.

16.(1) The competent authority shall only use sampling bottles which—

- (a) have been—
 - (i) sterilised in an autoclave for at least 15 minutes at 121°C;
 - (ii) dry sterilised at between 160°C and 170°C for at least one hour; or
 - (iii) irradiated by their manufacturer and not used before;

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- (b) are of a size which allows sufficient water to be taken and analysed for the presence of Intestinal enterococci and Escherichia coli; and
- (c) are made of transparent and colourless material.

(2) The competent authority shall—

- (a) use aseptic technique to maintain the sterility of the sample bottles; and
- (b) clearly identify every sample taken by marking in indelible ink the sample bottle and associated paperwork.

Storage and transport of samples before analysis.

17.(1) The competent authority shall, at all times, protect every sample taken from exposure to light, and in particular, direct sunlight.

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

(3) The time between sampling and analysis is to be kept as short as possible and samples must be analysed on the same working day, if possible.

(4) If, for practical reasons, the samples cannot be analysed on the same working day, then the samples shall be processed within no more than 24 hours and, in the meantime, they shall be stored in the dark and at a temperature of 4 °C ± 3 °C.

Reference methods of analysis.

18.(1) Subject to subregulation (2), the competent authority shall use the following reference methods of analysis□

- (a) for intestinal enterococci, ISO 7899-1 or ISO 7899-2; and
- (b) for Escherichia coli, ISO 9308-3 or ISO 9308-1.

(2) The competent authority may use such other reference methods of analysis as that person considers are substantively equivalent to those specified in subregulation (1).

Cyanobacteria.

19. Where any bathing water profile indicates a potential for cyanobacterial proliferation, the competent authority shall establish a monitoring programme at the bathing water at the frequency necessary to allow adequate management measures to be put in place in accordance with regulation 24.

Other Pollution.

20. The competent authority shall establish a visual monitoring programme for pollution such as tarry residues, glass, plastic, rubber or any other waste at every bathing water at the frequency necessary to allow adequate management measures to be put in place in accordance with regulation 24.

Macro-Algae and Marine Phytoplankton.

21. Where any bathing water profile indicates a tendency for proliferation of macro-algae or marine phytoplankton, the competent authority shall undertake an investigation at the bathing water to allow adequate management measures to be put in place in accordance with regulation 24.

PART 4**BATHING WATER ASSESSMENT AND CLASSIFICATION****Bathing Water Quality Assessment.**

22.(1) After the end of every bathing season, for every bathing water in Gibraltar, the competent authority shall—

- (a) prepare a set of bathing water quality data for that season; and
- (b) carry out a bathing water quality assessment using the set of bathing water quality data compiled in relation to that season and the relevant assessment period.

(2) In this regulation, the “relevant assessment period” is—

- (a) the immediately preceding three bathing seasons;
- (b) the immediately preceding two bathing seasons, where the competent authority so determines in accordance with subregulation (3); or

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- (c) the number of immediately preceding bathing seasons, being less than three, that the competent authority determines in accordance with subregulation (4).

(3) The competent authority may make a determination under subregulation (2)(b) where it is at least five years since the last change in the relevant assessment period.

(4) The competent authority may make a determination under subregulation (2)(c), where—

- (a) the set of bathing water quality data used is based on at least 16 samples; and
- (b) one of the conditions in subregulation (5) is met.

(5) For the purposes of subregulation (4)(c), the conditions are—

- (a) the competent authority designated the bathing water under regulation 3 less than four bathing seasons ago; or
- (b) the competent authority considers that any factors identified in the bathing water profile as likely to affect the classification of the bathing water under regulation 23 have changed, and the set of bathing water quality data used is based only on samples taken since those factors have changed.

Classification.

23.(1) As from the end of the 2015 bathing season, the competent authority shall classify every bathing water in Gibraltar as “poor”, “sufficient”, “good” or “excellent” in accordance with the provisions of these Regulations.

(2) As from the end of the 2015 bathing season, the competent authority shall ensure that all bathing waters in Gibraltar are classified as “sufficient” in accordance with the provisions of these Regulations and it shall take such realistic and proportionate measures as it considers appropriate with a view to increasing the number of bathing waters in Gibraltar classified as “excellent” or “good”.

**PART 5
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Management measures at bathing waters subject to pollution incidents.

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24.(1) This regulation applies where the competent authority, or the controller in relation to bathing water in Gibraltar, is aware of—

- (a) a cyanobacterial proliferation which it considers may pose a risk to bathers' health;
- (b) a proliferation of macro-algae or marine phytoplankton which it considers is unacceptable or may pose a risk to bathers' health;
- (c) the presence of other pollution, including tarry residues, glass, plastic, rubber or any other waste; or
- (d) any other incident, other than an incident of short-term pollution but including unexpected situations, that it considers may pose a risk to bathing water quality and bathers' health.

(2) The competent authority shall promptly—

- (a) notify—
 - (i) the controller of the bathing water, if the competent authority itself does not exercise control over the bathing water; and
 - (ii) where necessary, the sewerage undertaker; and
- (b) take, or cause to be taken, such management measures as it considers adequate to protect bathers' health including information to the public and, if necessary, a temporary bathing prohibition.

(3) The controller shall promptly—

- (a) consult the competent authority if the controller is a person or body other than the Government;
- (b) where necessary, notify the sewerage undertaker;
- (c) take such management measures there as he considers adequate to protect bathers' health; and
- (d) where necessary, remove the other pollution.

Additional management measures at “poor” bathing waters.

25.(1) Where the competent authority classifies bathing water as “poor” under regulation 23

- (a) the competent authority shall during the bathing season following this classification
 - (i) take, or cause to be taken, such adequate management measures at the bathing water as it considers adequate with a view to preventing bathers’ exposure to pollution;
 - (ii) notify the controller of the bathing water, if the competent authority itself does not exercise control over the bathing water; and
 - (iii) identify the reasons why the bathing water failed to achieve a classification of “sufficient”;
- (b) the controller shall
 - (i) take such management measures there as he considers adequate with a view to preventing bathers’ exposure to pollution; and
 - (ii) introduce advice against bathing there by means of public information under regulation 11.

(2) Subregulations (3) and (4) apply where

- (a) the competent authority has classified bathing water as “poor” under regulation 23 for five consecutive years; or
- (b) the competent authority determines by notice that they should apply because it considers that it would be unfeasible or disproportionately expensive for bathing water in Gibraltar to achieve a classification of “sufficient”.

(3) The competent authority shall notify the controller of the bathing water, if the competent authority itself does not exercise control over the bathing water.

(4) The controller shall introduce permanent advice against bathing there by means of public information under regulation 11.

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(5) Any determination under subregulation (2)(b) shall only be made by a person designated under regulation 2(2) with the approval of the competent authority itself.

Relevant procedures for short-term pollution.

26.(1) This regulation applies where—

- (a) having consulted the controller of the bathing water concerned, or considered his own duties as controller, the competent authority has established relevant procedures for short-term pollution at the bathing water; and
- (b) there is a short-term pollution there.

(2) The competent authority shall operate, or cause to be operated, the relevant procedures for short-term pollution for which it is responsible.

(3) The controller shall take the management measures that form part of the relevant procedures for short-term pollution there.

Enforcement.

27.(1) Where the Minister delegates any powers under these Regulations to any person, he shall be entitled to take the use of such powers into his own hands if he reasonably believes it to be advantageous.

(2) Without prejudice to such public law remedies as are available on the unreasonable exercise of power, any agreement under which the Minister delegates any powers under these Regulations may include provision to facilitate him monitoring the use of those powers and giving directions to the holders of those powers.

(3) A person commits an offence if that person bathes in any water where—

- (a) bathing is prohibited under these Regulations; and
- (b) the prohibition was reasonably obvious to any potential bather by means of signs, cordons, red flags or other such means,

and that person is liable on summary conviction to a fine on level 1 on the standard scale.

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(4) A private controller of any water shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale, if any person bathes in such water after bathing has been prohibited under these Regulations, unless reasonable steps had been taken (whether by the controller or otherwise) as would have prevented a reasonable person from bathing, including the use of such warnings as signs, cordons and red flags.

Reporting procedures.

28.(1) Reports shall be prepared by the competent authority in accordance with the requirements of Article 13 of the Bathing Water Directive and shall be submitted to the European Commission annually before the end of the calendar year in relation to the bathing season for that year.

(2) The competent authority shall, every year before the start of the bathing season, notify the European Commission of all waters in Gibraltar identified as bathing waters, including, where relevant, the reason for any change in classification compared to the preceding year.

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SCHEDULE

Regulation 23

CLASSIFICATION**Standards.**

1. The competent authority shall use the following standards for classification–

Standards for inland waters

| Parameter | “Excellent” | “Good” | “Sufficient” |
|---------------------------------------|--------------------|----------------------|--------------------|
| Intestinal enterococci ⁽¹⁾ | 200 ⁽²⁾ | 400 ⁽²⁾ | 330 ⁽³⁾ |
| Escherichia coli ⁽¹⁾ | 500 ⁽²⁾ | 1,000 ⁽²⁾ | 900 ⁽³⁾ |

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

⁽²⁾ Based upon a 95-percentile evaluation – see paragraph 2.

⁽³⁾ Based upon a 90-percentile evaluation – see paragraph 2.

Standards for coastal and transitional waters

| Parameter | “Excellent” | “Good” | “Sufficient” |
|---------------------------------------|--------------------|--------------------|--------------------|
| Intestinal enterococci ⁽¹⁾ | 100 ⁽²⁾ | 200 ⁽²⁾ | 185 ⁽³⁾ |
| Escherichia coli ⁽¹⁾ | 250 ⁽²⁾ | 500 ⁽²⁾ | 500 ⁽³⁾ |

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

⁽²⁾ Based upon a 95-percentile evaluation – see paragraph 2.

⁽³⁾ Based upon a 90-percentile evaluation – see paragraph 2.

Methodology.

2.(1) In this Schedule, “percentile value” is based on a percentile evaluation of the log₁₀ normal probability density function of microbiological data acquired from the bathing water used for the assessment under regulation 22.

(2) The competent authority shall derive a percentile value as follows–

(a) either–

(i) take the log₁₀ value of all bacterial concentrations in the data sequence to be evaluated; or

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- (ii) where the value under paragraph (a)(i) is zero, take the \log_{10} value of the minimum detection limit of the analytical method used;
 - (b) calculate the arithmetic mean (“m”) of the \log_{10} value taken under subparagraph (a);
 - (c) calculate the standard deviation (“s”) of the \log_{10} value taken under paragraph (a)
 - (d) derive the upper 90-percentile point of the data probability density function from the following equation: upper 90-percentile = antilog (m + 1.282s); and
 - (e) derive the upper 95-percentile point of the data probability density function from the following equation: upper 95-percentile = antilog (m + 1.65s).
- (3) Where bathing water is subject to short-term pollution incidents, it may only be classified under sub-paragraph 3 below as “sufficient”, “good” or “excellent” if–
- (a) having consulted the person or private controller who, controls the bathing water, the competent authority has established relevant procedures for short-term pollution there; and
 - (b) the number of samples disregarded under regulation 16(1) represents no more than the greater of either-
 - (i) 15 per cent of the total number of samples provided for in the monitoring calendars established under regulation 13 for the same period; or
 - (ii) one sample per bathing season.

Classification.

3.(1) At the end of every bathing season, the competent authority shall classify bathing water as “poor” if, in the set of bathing water quality data used, the percentile values for microbiological concentrations are higher than the “sufficient” standards set out in paragraph 1 of this Schedule.

(2) At the end of every bathing season, the competent authority shall classify bathing water as “sufficient” if–

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- (a) in the set of bathing water quality data, the percentile values for microbiological concentrations 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 competent authority shall classify bathing water as “good” if–
- (a) in the set of bathing water quality data, the percentile values for microbiological concentrations 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 competent authority shall classify bathing water as “excellent” if, in the set of bathing water quality data used, the percentile values for microbiological concentrations are equal to or lower than the “excellent” standards set out in paragraph 1.