

Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
23 September 2013

Meeting time:
14:30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Agenda

- 1 Introduction, apologies, substitutions and declarations of interest**
- 2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**

(Indicative time 2.30 – 2.40pm)

Negative Resolution Instruments

Instruments and Explanatory Memorandums can be found at:
<http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?lId=6965>

CLA289 – The Plant Health (Fees) (Wales) Regulations 2013

Negative procedure; Date Made: 7 July 2013; Date Laid: 10 July 2013; Coming into Force Date: 2 August 2013

CLA290 – The Ystrad Mynach College Further Education Corporation (Dissolution) Order 2013

Negative procedure; Date Made: 9 July 2013; Date Laid: 11 July 2013; Coming into Force Date: 1 August 2013.

CLA291 – The Coleg Powys Further Education Corporation (Dissolution) Order 2013

Negative procedure; Date Made: 9 July 2013; Date Laid: 11 July 2013; Coming into Force Date: 1 August 2013.

CLA292 – The Swansea Metropolitan University Higher Education Corporation (Dissolution) Order 2013

Negative procedure; Date Made: 9 July 2013; Date Laid: 11 July 2013; Coming into Force Date: 1 August 2013.

CLA293 – The Civil Enforcement of Parking Contraventions (County of Flintshire) Designation) Order 2013 (Page 1)

Instrument withdrawn

CLA(4)21–13(p1) – Government Response

CLA294 – The Higher Education Funding Council for Wales (Supplementary Functions) Order 2013

Negative procedure; Date Made: 9 July 2013; Date Laid: 15 July 2013; Coming into Force Date: 31 August 2013.

CLA295 – The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2013

Negative procedure; Date Made: 15 July 2013; Date Laid: 17 July 2013; Coming into Force Date: 30 September 2013.

CLA296 – The Education (Student Fees, Awards, Qualifying Courses and Persons) (Wales) Regulations 2013

Negative procedure; Date Made: 16 July 2013; Date Laid: 19 July 2013; Coming into Force Date: 1 September 2013

CLA297 – The Operation of the Local Curriculum (Wales) Regulations 2013

Negative procedure; Date Made: 16 July 2013; Date Laid: 19 July 2013; Coming into Force Date: 1 September 2013

CLA298 – The Education (Student Support and European Institutions) (Wales) Regulations 2013

Negative procedure; Date Made: 1 August 2013; Date Laid: 7 August 2013; Coming into Force Date: 30 August 2013

CLA299 – The Civil Enforcement of Road Traffic Contraventions (Guidelines on Levels of Charges) (Wales) Order 2013

Negative procedure; Date Made: 2 August 2013; Date Laid: 7 August 2013; Coming into Force Date: 2 November 2013

CLA300 – The Healthy Eating in Schools (Nutritional Standards and Requirements) (Wales) Regulations 2013

Negative procedure; Date Made: 8 August 2013; Date Laid: 9 August 2013; Coming into Force Date: 2 September 2013

<http://wales.gov.uk/about/cabinet/cabinetstatements/2013/healtheatingschools/?lang=en>

CLA302 – The Mumbles Oyster Fishery Order 2013

Negative procedure; Date Made: 11 August 2013; Date Laid: 15 August 2013; Coming into Force Date: 10 September 2013

CLA303 – The Free School Lunches and Milk (Universal Credit) (Wales) Order 2013

Negative procedure; Date Made: 15 August 2013; Date Laid: 16 August 2013; Coming into Force Date: 6 September 2013

CLA304 – The Civil Enforcement of Parking Contraventions (County of Flintshire) Designation (No.2) Order 2013

Negative procedure; Date Made: 6 August 2013; Date Laid: 8 August 2013; Coming into Force Date: 1 October 2013

CLA305 – The Adoption Support Services and Special Guardianship (Wales) (Amendment) Regulations 2013

Negative procedure; Date Made: 15 August 2013; Date Laid: 23 August 2013; Coming into Force Date: 1 October 2013

CLA306 – The Government of Maintained Schools (Training Requirements for Governors) (Wales) Regulations 2013

Negative procedure; Date Made: 23 August 2013; Date Laid: 28 August 2013; Coming into Force Date: 20 September 2013

CLA307 – The Government of Maintained Schools (Clerk to a Governing Body)

(Wales) Regulations 2013

Negative procedure; Date Made: 23 August 2013; Date Laid: 28 August 2013;
Coming into Force Date: 20 September 2013

CLA308 – The Fish Labelling (Wales) Regulations 2013

Negative procedure; Date Made: 27 August 2013; Date Laid: 29 August 2013;
Coming into Force Date: 26 September 2013

CLA309 – The Tax Credits (Approval of Child Care Providers) (Wales) (Amendment) Scheme 2013

Negative procedure; Date Made: 5 September 2013; Date Laid: 10 September 2013;
Coming into Force Date: 1 October 2013

CLA310 – The Childcare Act 2006 (Local Authority Assessment) (Wales) Regulations 2013

Negative procedure; Date Made: 5 September 2013; Date Laid: 10 September 2013;
Coming into Force Date: 1 October 2013

3 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3

(Indicative time 2.40 – 3.00pm)

Negative Resolution Instruments**CLA301 – The Education (Penalty Notices) (Wales) Regulations 2013 (Pages 2 – 20)**

Negative procedure; Date Made: 7 August 2013; Date Laid: 12 August 2013; Coming into Force Date: 2 September 2013

CLA(4)21–13(p2) – Report

CLA(4)21–13(p3) – Regulations

CLA(4)21–13(p4) – Explanatory Memorandum

Composite Negative Resolution Instruments**CLA288 – The Bathing Water Regulations 2013 (Pages 21 – 60)**

Composite Negative procedure: Date made: 3 July 2013; Date Laid: 9 July; Coming into Force in accordance with regulation 1.

CLA(4)21-13(p5) – Report
CLA(4)21-13(p6) – Regulations
CLA(4)21-13(p7) – Explanatory Memorandum

4 Evidence in relation to the Inquiry into Wales' role in the EU decision-making process

(Indicative time 3.00pm)

Rhodri Glyn Thomas, AM

5 Papers to note (Pages 61 – 67)

Letter from First Minister in relation to Commencement Orders

CLA(4)21-13(p8)

Letter from Chair to First Minister in relation to Commencement Orders

CLA(4)21-13(p9)

Letter from Minister in relation to Legislative Consent Memorandum – Anti-Social Behaviour, Crime and Policing Bill: provisions relating to dogs

CLA(4)21-13(p10)

Letter from Minister in relation to Technical Consultation on the Draft Council Tax Reduction Schemes and Prescribed Requirements Wales Regulations 2013

CLA(4)21-13(p11)

<http://wales.gov.uk/consultations/localgovernment/technical-consultation-council-tax-reduction-schemes/?lang=en>

6 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

(ix) any matter relating to the internal business of the committee, or of the Assembly, is to be discussed.

Inquiry into Agricultural Sector (Wales) Bill (Pages 68 – 69)

CLA(4)21-13(p12) – Paper

Forward Work Programme (Pages 70 – 72)

CLA(4)21-13(p13) – Forward Work Programme

Update Visit to Brussels 14 October 2013 (Pages 73 – 77)

CLA(4)21-13(p14) – Update

Agenda Item 2.5

The Civil Enforcement of Parking Contraventions (County of Flintshire) Designation Order 2013

The statutory instrument laid on 12th July was withdrawn on 18 July 2013. A new version of the instrument will be laid in the next 3 weeks.

Gorchymyn Dynodi Gorfodi Sifil ar Dramgwyddau Parcio (Sir y Fflint) 2013

Cafodd yr offeryn statudol a osodwyd ar 12 Gorffennaf ei dynnu'n ôl ar 18 Gorffennaf 2013. Bydd fersiwn newydd o'r offeryn yn cael ei gosod yn y 3 wythnos nesaf.

Constitutional and Legislative Affairs Committee Draft Report CLA(4)-21-13

CLA301 – The Education (Penalty Notices) (Wales) Regulations 2013

These Regulations set out the arrangements for using education-related fixed penalty notices for regular non-attendance at school.

Procedure: Negative

Technical Scrutiny

No points are identified for reporting under SO 21.2 in respect of this instrument

Merits Scrutiny

Under Standing Order 21.3 the Assembly is invited to pay special attention to the following instrument:-

1. The Children and Young People Committee have recently undertaken an inquiry reviewing the effectiveness of the Welsh Government's policy and guidance to promote positive behaviour and attendance within education provision for pupils of compulsory school age. The Committee's report, which was published recently, makes reference and recommendations in relation to education-related fixed penalty notices. A link to the Committee report is included.
<http://www.senedd.assemblywales.org/documents/s19651/Report%20-%20August%202013.pdf>
(S.O. 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.)

Legal Advisers

Constitutional and Legislative Affairs Committee

August 2013

Government Response:

The Education (Penalty Notices) (Wales) Regulations 2013

Thank you for your draft SI report in connection with the Education (Penalty Notices) (Wales) Regulations 2013.

The Chair of the Children and Young People Committee has written to me with a copy of the Committee's Report of the Inquiry into Attendance and

Behaviour. I will be responding to the Chair of the Committee and I will be happy to include you in my response.

2013 No. 1983 (W. 193)

EDUCATION, WALES

**The Education (Penalty Notices)
(Wales) Regulations 2013**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the necessary details for the operation of the penalty notice scheme under section 444A of the Education Act 1996 (“the 1996 Act”; section 444A was inserted by the Anti-Social Behaviour Act 2003).

Sections 444A and 444B were amended by S.I. 2013/1657 (W.155) so that those sections also apply to Wales.

In relation to truancy offences under section 444 of the 1996 Act these Regulations apply to penalty notices served on or after the date on which they come into force, whether the offence was committed before or after they come into force (regulation 1(3)).

Regulation 3 sets out the matters to be contained in a penalty notice.

Regulation 4 prescribes the level of the penalty which is to be paid to the local authority, and regulation 6 what is evidence of its payment or non-payment. Regulation 5 provides for the period in which it is to be paid, if it is to discharge the recipient’s liability for the offence. Regulation 6 provides which local authority the penalty is to be paid to.

Regulation 7 prescribes the period during which proceedings may be instituted under section 444A(3) of the 1996 Act as 42 days.

Regulation 8 details the circumstances in which a penalty notice may be withdrawn.

Regulations 10 to 13 prescribe who can issue penalty notices.

Regulations 14 - 18 requires a local code of conduct to be drawn up and consulted upon, for the issuing of

penalty notices to be done in accordance with the local code.

Regulations 19 – 21 prescribe that a copy of the penalty notice is to be provided to the local authority who must keep records as detailed. If the Welsh Ministers require information in respect of penalty notices, the local authority must provide it to them.

Regulations 22 and 23 prescribe how the penalty notice is to be served and how sums received by local authorities are to be spent.

2013 No. 1983 (W. 193)

EDUCATION, WALES

**The Education (Penalty Notices)
(Wales) Regulations 2013**

Made 7 August 2013

Laid before the National Assembly for Wales
12 August 2013

Coming into force 2 September 2013

The Welsh Ministers in exercise of the powers conferred on the Secretary of State by sections 444A(3) and (6), 444B and 569 of the Education Act 1996⁽¹⁾ and now vested in them, make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Education (Penalty Notices) (Wales) Regulations 2013 and they come into force on 2 September 2013.

(2) These Regulations apply in relation to Wales.

(3) In relation to offences under section 444 of the 1996 Act, these Regulations apply to penalty notices issued on or after the date on which these Regulations come into force, whether the alleged offence was committed before, on or after that date.

Interpretation

2.—(1) In these Regulations—

“the 1996 Act” (“*Deddf 1996*”) means the Education Act 1996;

(1) 1996. c.56; sections 444A and 444B were inserted by section 23(1) of the Anti-social Behaviour Act 2003 (c.38); section 444A has been amended by section 117 of, and paragraph 3 of Schedule 18 to, the Education Act 2005 (c.18) and section 110 of the Education and Inspections Act 2006 (c.40). References to local education authority were substituted with local authority by S.I. 2010/1158. The application of sections 444A and 444B were applied to Wales by virtue of S.I. 2013/1657 (W.155).

“alternative educational provision” (“*darpariaeth addysgol amgen*”) means one of the following—

- (a) education provided by a local authority for a child otherwise than at school or at the child’s home by way of arrangements made under section 19 of the 1996 Act⁽¹⁾;
- (b) education at a place outside the premises of the school at which the child is a registered pupil and which the child is required by the appropriate authority (within the meaning of section 444ZA⁽²⁾ of the 1996 Act) to attend for the purpose of receiving any instruction or training;

“code of conduct” (“*cod ymddygiad*”) means the local authority’s code of conduct for the time being in force pursuant to regulations 14 to 16;

“penalty notice” (“*hysbysiad cosb*”) means a penalty notice issued pursuant to section 444A(1) of the 1996 Act; and

“recipient” (“*derbynnydd*”) means a person to whom a penalty notice is given in accordance with section 444A(1) of the 1996 Act.

(2) In these Regulations a reference to a deputy or assistant head teacher includes a reference to a person acting as deputy or assistant head teacher, as the case may be⁽³⁾.

Form and content of penalty notices

3. A penalty notice must give such details of the circumstances alleged to constitute the offence to which the notice relates as are necessary to give reasonable information as to the offence and must contain—

- (a) the name and address of the recipient;
- (b) the name and address of the child who—
 - (i) is failing to attend school regularly;
 - (ii) is failing to attend alternative educational provision regularly and, as applicable—
 - (aa) the name of the school where the child is a registered pupil, if applicable; and
 - (bb) the place where the alternative educational provision is provided for the child or at which the child is required to attend,

(1) Section 19 was amended by sections 47 and 57 of, and Schedule 8 to, the Education Act 1997 (c.44).
(2) Section 444ZA was inserted by section 116 of the Education Act 2005.
(3) By section 579(1) of the Education Act 1996 (c.56), “head teacher” includes an acting head teacher.

as the case may be;

- (c) the name and official particulars of the authorised officer issuing the notice;
- (d) the period during which the offence was committed in the case of an offence under section 444 of the 1996 Act, and the date of the issue of the notice;
- (e) the amount of the penalty which is to be paid, if it is paid within 28 days in accordance with regulation 4, and the amount in accordance with that regulation if it is not paid within that period but is paid within 42 days;
- (f) the name and the address of the local authority to which the penalty is to be paid in accordance with regulation 6 and to which any correspondence relation to the penalty notice may be sent;
- (g) the method or methods by which payment of the penalty may be made;
- (h) the period for paying the penalty, in accordance with regulation 5;
- (i) a statement that payment within that period will discharge any liability of the recipient for the offence;
- (j) the consequences of the penalty not being paid before the expiration of the period for paying it; and
- (k) the grounds on which the notice may be withdrawn.

The penalty

Amount of penalty

4. The amount of the penalty to be paid is—

- (a) £60, where the amount is paid within 28 days of receipt of the penalty notice; or
- (b) £120, where paragraph (a) does not apply but where the amount is paid within 42 days of receipt of the penalty notice.

Period for payment of the penalty

5. The time by which the penalty is to be paid⁽¹⁾ is within 42 days of receipt of the penalty notice.

Payment of penalty

6.—(1) The penalty is payable to—

(1) If the penalty is paid within this period, the recipient cannot be convicted of the offence under section 444A(4) of the Education Act 1996 (c.56), to which the notice relates.

- (a) the local authority in whose area the school at which the recipient's child is a registered pupil is situated;
- (b) where the child is not, at the time of giving the penalty notice, a registered pupil at any school, whether due to permanent exclusion or otherwise, the local authority in whose area the child resides.

(2) A certificate purporting to be signed by the proper officer of a local authority to the effect that the recipient of a penalty notice has or has not paid the amount due on or before a date stated in the certificate is admissible in evidence in any legal proceedings and is evidence of the matters stated in it.

Effect of penalty notice

Period during which proceedings may not be instituted

7. The period prescribed for the purposes of section 444A(3) of the 1996 Act is 42 days beginning with the date on which the recipient receives the penalty notice.

Withdrawal

Withdrawal of penalty notice

8.—(1) A penalty notice may be withdrawn by the local authority named in the notice as the authority to which payment is to be made in any case in which—

- (a) that authority determines that—
 - (i) it ought not to have been issued; or
 - (ii) it ought not to have been issued to the person named as the recipient; or
- (b) it appears to the authority that the notice contains material errors.

(2) A penalty notice may be withdrawn in accordance with paragraph (1) whether or not the period for payment referred to in the notice pursuant to regulation 3(h) has expired, and whether or not the penalty has been paid.

(3) Where a penalty notice has been withdrawn in accordance with paragraph (1)—

- (a) notice of the withdrawal must be given to the recipient; and
- (b) any amount paid by way of penalty in pursuance of that notice must be repaid to the person who paid it.

(4) Except as provided in paragraph (5), no proceedings may be continued or instituted against the recipient for the offence in connection with which the withdrawn penalty notice was issued, or, where the penalty notice related to an offence under subsection (1) of section 444 of the 1996 Act, for an offence

under subsection (1A) arising out of the same circumstances.

(5) But where a penalty notice was issued, and was withdrawn pursuant to paragraph (1)(b), proceedings may be continued or instituted—

- (a) for the offence in connection with which that penalty notice was issued; or
- (b) where the penalty notice related to an offence under subsection (1) of section 444 of the 1996 Act, for an offence under subsection (1A) of that section arising out of the same circumstances as the first mentioned offence,

if both of the following conditions are met—

- (i) a further penalty notice in respect of the offence, or in the case of sub-paragraph (b), the first mentioned offence, was issued at the same time as the first penalty notice was withdrawn; and
- (ii) the penalty has not been paid pursuant to that further penalty notice in accordance with the requirements of these Regulations.

Non payment of the penalty

9. The authority must withdraw the penalty notice where—

- (a) the penalty is not paid in full before the expiry of the period for paying it; and
- (b) the local authority named in the notice pursuant to regulation 3(f) has neither instituted proceedings against the recipient for the offence to which the notice relates, nor is contemplating such proceedings.

Issue of penalty notices

Authority to issue penalty notices

10.—(1) A head teacher may authorise a deputy or assistant head teacher to issue penalty notices.

(2) But a head teacher may not authorise any other member of staff to issue penalty notices.

Limitation on schools issuing penalty notices

11. A head teacher or deputy or assistant head teacher may only issue a penalty notice in respect of a child who is a registered pupil at the school at which that head teacher, or deputy or assistant head teacher, as the case may be, works.

Limitation on local authorities, issuing penalty notices

12.—(1) Subject to paragraph (2), an officer of a local authority may only issue a penalty notice in respect of a child—

- (a) who is a registered pupil at a school in the area of that authority;
- (b) for whom that authority has made arrangements for alternative educational provision (whether or not in the area of that authority); or
- (c) who is not, at the time the notice is given, a registered pupil at any school (whether due to permanent exclusion or otherwise) but resides in the area of that authority.

(2) Where a local authority has entered into an agreement with another local authority for an officer of that other authority to issue penalty notices in respect of a child to which paragraph (1)(a) or (b) applies, an officer of that other authority may issue a penalty notice in respect of such child.

Several penalty notices in respect of the same offence

13. Where there is more than one person liable for the offence, a separate penalty notice may be issued to each person.

Codes of conduct

Requirement to draw up code of conduct

14. Each local authority must draw up a code of conduct which sets out measures to ensure consistency in the issuing of penalty notices, including—

- (a) means of avoiding the issue of duplicate penalty notices;
- (b) measures to ensure that a penalty notice is not issued in respect of an offence when proceedings for that offence under section 444 of the 1996 Act (or an offence under subsection (1A) of that section arising out of the same circumstances) as the case may be, are contemplated or have been commenced by the local authority;
- (c) the occasions when it will be appropriate to issue a penalty notice for an offence;
- (d) a maximum number of penalty notices that may be issued to one parent in any twelve month period; and
- (e) arrangements for co-ordination between the local authority, neighbouring local authorities

where appropriate, the police and authorised officers⁽¹⁾.

Consultation on the code of conduct

15.—(1) In preparing the code of conduct the local authority must consult governing bodies, head teachers and the chief officer of police for a police area which includes all or part of the area of the local authority.

(2) In this regulation—

“chief officer of police” has the meaning given by section 101(1) of the Police Act 1996⁽²⁾;

“police area” means a police area provided for by section 1 of that Act.

Compliance with the code of conduct

16. Any person issuing a penalty notice must do so in accordance with the code of conduct.

Information

Copy of the penalty notice to be supplied to the local authority

17. A person issuing a penalty notice must (without delay) provide a copy to the local authority which is named in the notice as the authority to which payment is to be made pursuant to regulation 3(f).

Records

18. A local authority must keep records of penalty notices which must include—

- (a) a copy of each notice issued;
- (b) a record of all payments made and on what dates;
- (c) whether the notice was withdrawn and on what grounds; and
- (d) whether the recipient was prosecuted for the offence for which the notice was issued (or, where the notice related to an offence under subsection (1) of section 444 of the 1996 Act, for an offence under subsection (1A) arising out of the same circumstances).

(1) “Authorised officer” is defined in section 444B(4) of the Education Act 1996 (c.56) in relation to penalty notices under section 444A of that Act.

(2) 1996 c.16, to which there are amendments not relevant to these Regulations.

Information to the Welsh Ministers

19. A local authority must supply to the Welsh Ministers such information as they may require in respect of penalty notices.

Final provisions

Service of notices

20.—(1) Where the penalty notice is served by first class post⁽¹⁾, service is deemed to have been effected, unless the contrary is proved, on the second working day after posting the notice.

(2) In this regulation “working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday, or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971⁽²⁾.

Sums received by local authorities

21.—(1) The functions of a local authority specified for the purposes of section 444A(6)(a) of the 1996 Act are issuing and enforcing penalty notices, and prosecuting recipients who do not pay.

(2) To the extent that sums received by a local authority are not used for the purposes of the functions specified in paragraph (1), they must be paid to the Welsh Ministers.

Carwyn Jones

First Minister of Wales

7 August 2013

(1) Section 572 of the Education Act 1996 makes provision for the service of notices.
(2) 1971 c.80.

Explanatory Memorandum to the Education (Penalty Notice) (Wales) Regulations 2013

This Explanatory Memorandum has been prepared by the Department for Education and Skills and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Penalty Notice) (Wales) Regulations 2013.

Carwyn Jones
First Minister of Wales

7 August 2013

Description

1. These Regulations set out the arrangements for using education-related fixed penalty notices for regular¹ non-attendance at school.

Matters of special interest to the Constitutional and Legislative Affairs Committee

2. None.

Legislative background

3. Section 7 of the Education Act 1996 places a duty on parents to ensure that their child receives full-time, efficient education suitable to the child's age, ability and aptitude and any special needs they may have.
4. Section 444A and 444B of the Education Act 1996 allows for penalty notices in respect of failure to secure regular attendance at school of a registered pupil and for the Welsh Ministers to make regulations regarding their operation.
5. Sections 23(9) and (10) of the Anti-social Behaviour Act 2003 ("the 2003 Act") allows the Welsh Ministers to extend to Wales the application of sections 444A and 444B of the Education Act 1996 by making regulations that remove the words 'in England' from those sections. The practical effect of this is that those sections will apply to both England and Wales. The Anti-Social Behaviour Act 2003 (Amendment to the Education Act 1996) (Wales) Order 2013 removed the words "in England" in each place that they occurred in sections 444A and 444B of the Education Act 1996.
6. The functions of the Secretary of State in the Education Act 1996 were transferred to the National Assembly for Wales by way of the National Assembly for Wales (Transfer of Functions) Order 1999. Those functions and the functions in the Anti-social Behaviour Act 2003 were transferred to the Welsh Ministers in accordance with paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

¹ Regular will be defined by the Local Authority as attendance falling below a set percentage agreed within that local authority

7. The Regulations will be laid under the negative resolution procedure.

Purpose & intended effect of the legislation

8. There is clear statistical evidence to demonstrate the link between poor attendance and low attainment and the level of unauthorised and persistent² absences in Wales is a concern. Evidence shows that children with poor attendance are unlikely to succeed academically and they are more likely to be not in education, employment or training (NEET) when they leave compulsory age schooling.
9. We need to ensure that local authorities have appropriate tools and powers to bring about improvements in attendance.
10. Penalty notices are one option amongst a number of different interventions available to promote better school attendance. Penalty notices will support local authorities and schools, to ensure parents fulfil their responsibilities by ensuring that their children attend school regularly.
11. Education-related penalty notices enable parents to discharge potential liability for conviction for these offences by paying a penalty of £60 if paid within 28 days rising to £120 if paid after 28 days but within 42 days. If the penalty is unpaid or paid in part at the end of the 42 day period, the local authority must withdraw the notice if it does not prosecute for the offence to which the notice relates.

Consultation

12. The Welsh Government consulted with key sectors including parents, pupils, schools, local authorities, regional education consortia, and education welfare services between 30 November 2012 and 22 February 2013 (12 weeks).
13. In the main there was general agreement with the proposals. There were two main issues arising from the responses which have been addressed within the guidance that will be issued to local authorities:

² Persistent absentees are pupils who were absent for at least 20 per cent or more of possible sessions as defined for statistical purposes by Welsh Government

- i. the implementation of a local code of conduct by local authorities
 - ii. the power for head teachers to issue penalty notices
- 14. Responses to the consultation called for either a national code of conduct or a more detailed 'model' code of conduct prepared by the Welsh Government. A local code of conduct is proposed to allow local authorities and schools to take into consideration local and individual circumstances. This will be developed by local authorities.
- 15. Welsh Government guidance on the penalty notice system, to be published alongside the Regulations, will make clear that local authorities, following consultation with their schools and police, may limit the power of issuing penalties to the authority only and not head teachers if they so wish as part of their code of conduct.
- 16. The full summary of responses to the consultation can be found at:
<http://wales.gov.uk/consultations/education/nonattendancepenalty/?lang=en>

Regulatory Impact Assessment (RIA)

- 17. The Regulations are not expected to impact on businesses, charities or the voluntary sector and as such, a full RIA has not been completed. The Regulations have no impact on the statutory duties (sections 77 -79 GOWA 06) or statutory partners (sections 72-75 GOWA 06).
- 18. The impact to local government is in relation to local authorities, schools and the police. The Welsh Government envisages local authorities making use of these Regulations.

Options

Option 1: Do nothing

- 19. In the event of the instrument not coming into force, then we would continue to regulate attendance through the current parenting contracts, parenting orders, school attendance orders or education supervision order.

Costs

20. This is the baseline option and as such there are no **additional** costs associated with this option.
21. With no change in the enforcement options available to local authorities, attendance levels would not be expected to increase any further. Similarly there would be no impact on improving attainment rates.
22. The number of lengthy and costly prosecutions currently undertaken is not expected to decrease.

Option 2: Make the legislation

23. By introducing the Regulations additional support would be provided to improve attendance and as such levels of attainment across Wales. This would provide a further option to address persistent low level non attendance at school.

Costs

24. There will be an initial financial outlay for the Welsh Government for preparing guidance on the Regulations for local authorities. The estimated staff cost for developing this guidance is approximately £3000.
25. There will be a transitional cost for each local authority for developing a local area code of conduct and consulting with/informing families. The estimated one-off cost for each local authority is £6000. It is expected that this cost would be offset by savings from the reduction in the number of prosecutions.
26. It is intended that implementation of the penalty notices will be cost neutral. Local authorities will retain any revenue from the penalty notice to cover enforcement costs. Any surplus will be paid to the Welsh Consolidated Fund. There are already processes in place to monitor pupil attendance and so there are no additional monitoring costs under this option.
27. There will be a cost to the individual families served with a penalty notice. As noted above, the cost will be £60 if paid within a 28 day period, rising to £120 if paid between 28 and 42 days.

Benefits

28. The main benefit of these Regulations is to increase and improve attendance rates which in turn, will drive up attainment levels of pupils. In addition, it will allow local authorities to address persistent low level non attendance quickly and effectively without needing to resort to protracted prosecutions, an improvement for local authorities.
29. Some of the key findings of research undertaken in the UK³ included the following:
- Penalty notice warning letters were found to contribute to positive impacts on pupils' attendance. In particular, they were perceived to contribute to improvements in attendance for pupils who have less entrenched attendance issues and for whom there are no specific issues or reasons underpinning their low attendance.
 - The threat of the penalty notice was often considered to be sufficient to improve attendance without one actually being issued.
 - Penalty notices were found to be an effective approach to dealing with punctuality issues and for cases where there were no complex issues or there did not appear to be underlying reasons for poor attendance.
 - Penalty notices were less effective in circumstances where there were underlying family issues or where attendance issues were more entrenched.

³ <https://www.gov.uk/government/publications/investigating-the-use-of-parental-responsibility-measures-for-school-attendance-and-behaviour-final-report>

Competition Assessment

30. The proposed Regulations do not affect business, charities and /or the voluntary sector.

Post implementation review

31. Local authorities will monitor and review statistics and processes on an annual basis. Welsh Government will be provided with data upon request.
32. The legislation will be reviewed to establish the actual costs and benefits and whether it is achieving its desired effects after two years. This will allow for the new system to bed in and comparable data to be available

Constitutional and Legislative Affairs Committee Draft Report

CLA(4)-21-13

CLA288 – The Bathing Water Regulations 2013

Procedure: Negative

The Regulations revoke and replace the Bathing Water Regulations 2008, and implement in England and Wales only, 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 (“the Bathing Water Directive”). They also implement Commission Implementing Decision 2011/321/EU establishing pursuant to Directive 2006/7, a symbol for information to the public on bathing water classification and any bathing prohibition or advice against bathing.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 (ix) in respect of this instrument:

That it is not made or to be made in both English and Welsh

Merits Scrutiny

No points are identified for reporting in respect of this instrument .

Legal Advisers

Constitutional and Legislative Affairs Committee

September 2013

Government Response:

The Bathing Water Regulations 2013

The purpose of these Regulations was, inter alia, to respond to a challenge from the European Commission on the common transposition of Directive 2006/7/EC in England and Wales by the (composite) predecessor transposing regulations. It is considered appropriate to maintain a common England and

DRAFT SI REPORT

Wales approach to transposition, so as to ensure the Commission's concerns are fully addressed.

These composite Regulations apply to England and Wales and are subject to approval by the National Assembly for Wales and by Parliament. Accordingly, it is not considered reasonably practicable for this Instrument to be laid in draft, or made, bilingually.

STATUTORY INSTRUMENTS

2013 No. 1675

WATER RESOURCES

The Bathing Water Regulations 2013

Made - - - - 3rd July 2013

Laid before Parliament 9th July 2013

Laid before the National Assembly for Wales 9th July 2013

Coming into force in accordance with regulation 1

The Secretary of State is designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to the environment, and the Welsh Ministers are designated^(c) for the purposes of that section, in relation to measures relating to water resources.

The Secretary of State in relation to England and Scotland^(d) and the Welsh Ministers in relation to Wales, make the following Regulations in exercise of the powers conferred by that section of that Act.

PART 1

GENERAL PROVISIONS

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Bathing Water Regulations 2013.

(2) The following provisions come into force on 31st July 2013—

- (a) this regulation and regulations 2 to 9;
- (b) in regulation 14—
 - (i) paragraph (1) in so far as it relates to paragraphs (2) to (5);
 - (ii) paragraphs (2) to (5);
- (c) regulations 15 to 18;
- (d) in regulation 19—
 - (i) paragraph (1);

^(a) S.I. 2008/301.

^(b) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).

^(c) See S.I. 2003/2901 for the designation conferred on the National Assembly for Wales. By virtue of sections 59 and 162 of, and paragraph 28 of Schedule 11 to, the Government of Wales Act 2006 (c. 32), that designation is now conferred on the Welsh Ministers.

^(d) The power of the Secretary of State to make regulations in relation to matters as regards Scotland is preserved by section 57(1) of the Scotland Act 1988 (c. 46).

- (ii) paragraphs 3(b) and (c);
 - (iii) paragraph (4)(b);
 - (e) regulation 20.
- (3) All remaining provisions come into force on 24th March 2015.
- (4) Subject to paragraph (5), these Regulations extend to England and Wales only.
- (5) Any amendment or revocation made by these Regulations has the same extent as the enactment being amended or revoked.

Interpretation

2.—(1) In these Regulations—

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

“the appropriate agency” means—

- (a) in relation to surface waters in England, the Environment Agency;
- (b) in relation to surface waters in Wales, the Natural Resources Body for Wales;

“appropriate agency management measures” means any measures taken by the relevant appropriate agency in relation to a bathing water—

- (a) to identify and assess the causes of pollution that might, in the particular circumstances of each case, affect bathing waters and impair bathers’ health;
- (b) to reduce the risk of pollution (being measures within the appropriate agency’s relevant functions referred to in regulation 5); or
- (c) to issue advice against bathing;
- (d) under regulations 7 to 11;

“the appropriate Minister” means—

- (a) in relation to surface waters in England, the Secretary of State;
- (b) in relation to surface waters in Wales, the Welsh Ministers;

“bathing season” means the period specified in regulation 4;

“a bathing water” means an area of surface water identified under regulation 3 and listed at Schedule 2, at which permanent advice against bathing is not currently in place under regulation 13;

“the 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^(a);

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

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

“the Decision” means the Commission Implementing Decision 2011/321/EU establishing, pursuant to Directive 2006/7/EC of the European Parliament and of the Council, a symbol for information to the public on bathing water classification and any bathing prohibition or advice against bathing^(b);

“England” includes the territorial sea adjacent to England and not forming any part of Wales;

“local authority” means—

(a) OJ No L 64, 4.3.2006, p.37, as amended by Regulation (EC) No 596/2009 (OJ No L 188, 18.7.2009, p.14).
 (b) OJ No L 143, 31.5.2011, p.38.

(a) in England, the council of any district, parish or town, the unitary authority of a place in which there are no districts, the council of a London borough, the Common Council of the City of London or the Council of the Isles of Scilly; or

(b) in Wales, the council of a county or county borough;

“local authority management measures” means measures taken by a local authority in relation to a bathing water which it controls—

(a) to give information to the public; or

(b) to prevent, by means of public information (including issuing an advice against bathing), bathers’ exposure to pollution;

“management measures” means appropriate agency management measures or local authority management measures;

“permanent advice against bathing” means advice issued, in relation to at least one whole bathing season, under regulation 13;

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

(a) intestinal enterococci or *Escherichia coli*;

(b) cyanobacterial proliferation;

(c) a proliferation of macro-algae or marine phytoplankton;

(d) waste, including tarry residues, glass, plastic or rubber;

“relevant land” is land which is—

(a) normally used to access a bathing water from the landward side, and

(b) immediately adjacent to that bathing water or, where the bathing water is tidal, immediately above the high water mark;

“relevant procedures for short-term pollution” means—

(a) in relation to an appropriate agency, any measures, including appropriate agency management measures, to prevent reduce or eliminate the causes of pollution and may include surveillance, early warning systems or monitoring with a view to preventing bathers’ exposure to pollution by means of a warning, or, where necessary, an advice against bathing; and

(b) in relation to a local authority, any measures, including local authority management measures, to notify the public that the bathing water is affected by short-term pollution;

“set of bathing water quality data” means data obtained from results of samples taken under Part 1 of Schedule 4;

“short-term pollution” means contamination by intestinal enterococci or *Escherichia coli* where the appropriate agency—

(a) has identified the causes, and

(b) does not normally expect the contamination to affect bathing water quality for more than approximately 72 hours after the bathing water is first affected;

“Wales” has the meaning given by section 158 of the Government of Wales Act 2006(a);

(2) In these Regulations, “coastal water”, “groundwater”, “inland water”, “lake”, “river”, “surface water” and “transitional waters” have the meaning as in Directive 2006/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy, and are listed in Schedule 1 to these Regulations.

(3) For the purposes of these Regulations, a local authority controls a bathing water if the relevant land relating to that bathing water is located within its area.

(a) 2006 c.32.

Identification of bathing waters

3.—(1) Part 1 of Schedule 2 lists the surface waters that have been identified in England, other than excluded pools and waters, at which the Secretary of State expects a large number of people to bathe, having regard in particular to past trends and any infrastructure or facilities provided, or other measures taken, to promote bathing at those waters.

(2) Part 2 of Schedule 2 lists the surface waters that have been identified in Wales, other than excluded pools and waters, at which the Welsh Ministers expect a large number of people to bathe, having regard in particular to past trends and any infrastructure or facilities provided, or other measures taken, to promote bathing at those waters.

(3) For the purposes of paragraphs (1) and (2), excluded pools and waters are—

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

(4) The Secretary of State must publish the following information annually, and in accordance with paragraph (6)—

- (a) a complete list of all bathing waters in England stating their classifications;
- (b) details of all surface waters in England at which permanent advice against bathing is currently in place under regulation 13, including, in relation to each such surface water, the reasons for that advice.

(5) The Welsh Ministers must publish the following information annually, and in accordance with paragraph (6)—

- (a) a complete list of all bathing waters in Wales stating their classifications;
- (b) details of all surface waters in Wales at which permanent advice against bathing is currently in place under regulation 13, including, in relation to each such surface water, the reasons for that advice.

(6) The information to be published under paragraphs (4) and (5) must be actively disseminated before the start of the bathing season using appropriate media and technologies including the internet, and in such languages as the appropriate Minister considers appropriate.

(7) For the purposes of giving effect to the Bathing Water Directive, section 104(1) of the Water Resources Act 1991^(a) (meaning of “controlled waters”) has effect as if “inland freshwaters” included any lake or pond (other than a relevant lake or pond within the meaning of that section) identified under this regulation.

Length of the bathing season

4. For the purposes of these Regulations, the bathing season in England and Wales begins on 15th May and ends at the end of the day on 30th September in each year.

General duties

5.—(1) The Secretary of State, the Welsh Ministers, the Environment Agency and the Natural Resources Body for Wales must exercise their relevant functions in England and Wales—

- (a) so as to ensure that, by the end of the bathing season in 2015, all bathing waters are classified under regulation 11 at least as “sufficient”;
- (b) so as to take such realistic and proportionate measures as they each consider appropriate with a view to increasing the number of bathing waters classified under regulation 11 as “good” or “excellent”; and

(a) 1991 c. 57.

- (c) in all other respects, so as to ensure compliance with the requirements of the Bathing Water Directive.

(2) In this regulation, “relevant functions” means functions, so far as relevant, under the enactments listed in Schedule 2 (enactments) to the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003^(a).

(3) The appropriate agency must promptly provide—

- (a) to the appropriate Minister such information about the quality of bathing waters as the appropriate Minister may by notice reasonably require; and
- (b) to a local authority such information about the quality of the bathing waters that it controls as that local authority may by notice reasonably require.

Public participation

6.—(1) The Secretary of State, the Welsh Ministers and the appropriate agency must—

- (a) encourage public participation in the exercise of their respective functions under these Regulations; and
- (b) ensure that the public has an opportunity—
 - (i) to find out how to participate, and
 - (ii) to submit suggestions, comments or complaints.

(2) The Secretary of State, the Welsh Ministers and the appropriate agency must take due account of any suggestions, comments or complaints they have obtained from the public when exercising their respective functions under these Regulations.

PART 2

BATHING WATER PROFILES

Bathing water profiles

7.—(1) The appropriate agency must—

- (a) ensure that prior to the start of each bathing season, it has established a bathing water profile for every bathing water; and
- (b) keep every bathing water profile under review.

(2) The appropriate agency may combine the bathing water profiles of contiguous bathing waters.

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

- (a) the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003;
- (b) the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003^(b); or
- (c) the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004^(c).

(4) Schedule 3 (bathing water profiles) has effect.

^(a) S.I. 2003/3242, as amended by: S.I. 2008/1097, 2007/3538, 2010/675, 2011/556; W.S.I. 2013/755 (W. 90). See also regulation 19(3) of these Regulations for further amendments to this instrument.

^(b) S.I. 2003/3245.

^(c) S.I. 2004/99. This instrument is amended by regulation 19(4) of these Regulations.

PART 3

MONITORING ETC. OF BATHING WATERS AND PUBLIC INFORMATION

Monitoring etc.

- 8.—(1) The appropriate agency must establish a monitoring programme for every bathing water.
- (2) The monitoring programme for intestinal enterococci and *Escherichia coli* must be in accordance with Part 1 of Schedule 4.
- (3) The appropriate agency must undertake appropriate monitoring for cyanobacteria in accordance with Part 2 of Schedule 4.
- (4) The appropriate agency must undertake investigations for macro-algae and marine phytoplankton in accordance with Part 3 of Schedule 4.
- (5) The appropriate agency must undertake visual inspections for waste, including tarry residues, glass, plastic or rubber in accordance with Part 4 of Schedule 4.
- (6) After the end of every bathing season, the appropriate agency must notify the appropriate Minister, giving reasons, if it has suspended the monitoring calendar in accordance with paragraph 2 of Schedule 4.

Public information

- 9.—(1) Every local authority that controls a bathing water must ensure that the following information about the bathing water is actively disseminated and promptly made available to the public during the bathing season in an easily accessible place in the near vicinity of the bathing water—
- (a) the bathing water's current classification pursuant to regulation 11, represented by a symbol in accordance with Part 2 of the Annex to the Decision;
 - (b) any advice against bathing which has been issued there, represented by a symbol in accordance with Part 1 of the Annex to the Decision, and giving reasons;
 - (c) a general description of the bathing water, in non-technical language, based on its bathing water profile;
 - (d) information on the nature and expected duration of abnormal situations there; and
 - (e) an indication of the sources of more complete information published in accordance with paragraph (2).
- (2) In relation to every bathing water, the appropriate agency must use appropriate media and technologies including the internet to actively and promptly disseminate the following information in such languages as the appropriate agency considers appropriate—
- (a) the information referred to in paragraph (1);
 - (b) before the start of every bathing season, the bathing water's classification in accordance with regulation 11 over the last three years;
 - (c) the current bathing water profile;
 - (d) as soon as possible after the completion of the analysis under Schedule 4, the results of the monitoring carried out in accordance with regulation 8(2) since the beginning of the current bathing season;
 - (e) where the bathing water is classified as "poor" under regulation 11, information as to—
 - (i) the causes of pollution there, and
 - (ii) the management measures being taken there under regulation 13; and
 - (f) information as to incidences of short-term pollution so far as required by regulation 14(2)(c)(i) to (v).
- (3) The appropriate agency must—

- (a) prepare a general description of every bathing water for use under paragraph (1)(c); and
 - (b) make the descriptions available to local authorities.
- (4) Public information under these Regulations must—
 - (a) wherever possible, be provided using a geographic information system; and
 - (b) be presented in a clear and coherent manner.

PART 4

BATHING WATER ASSESSMENT AND CLASSIFICATION

Assessment

10.—(1) At the end of every bathing season, for every bathing water, the appropriate agency 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 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, if the appropriate agency so determines in accordance with paragraph (3); or
 - (c) the number of immediately preceding bathing seasons, being less than three, that the appropriate agency determines in accordance with paragraph (4).
- (3) The appropriate agency may make a determination under paragraph (2)(b) where—
 - (a) it has consulted the appropriate Minister; and
 - (b) it is at least five years since the last change in the relevant assessment period.
- (4) The appropriate agency may make a determination under paragraph (2)(c), if—
 - (a) it has consulted the appropriate Minister;
 - (b) the set of bathing water quality data used is based on at least 16 samples; and
 - (c) it considers that any factors identified in the bathing water profile as likely to affect the classification of the bathing water under regulation 11 have changed, and the set of bathing water quality data used is based only on samples taken since those factors have changed.

Classification

11.—(1) On the basis of each assessment made under regulation 10, the appropriate agency must classify every bathing water as “poor”, “sufficient”, “good” or “excellent” in accordance with Schedule 5.

(2) The first classification of bathing waters under this regulation must be completed at the end of the bathing water season in 2015.

PART 5

MANAGEMENT OF BATHING WATERS

Management measures at bathing waters subject to pollution incidents

- 12.—**(1) This regulation applies where a body mentioned in paragraph (2) is aware of—
- (a) an incident of contamination by intestinal enterococci or *Escherichia coli*, other than an incident of short-term pollution to which regulation 15 applies, that the body considers may pose a risk to bathing water quality and bathers' health;
 - (b) a cyanobacterial proliferation which the body considers may pose a risk to bathers' health;
 - (c) a proliferation of macro-algae or marine phytoplankton which the body considers is unacceptable or may pose a risk to bathers' health;
 - (d) the presence of waste, including tarry residues, glass, plastic or rubber; or
 - (e) any other incident, other than an incident of short-term pollution to which regulation 15 applies, that the body considers may pose a risk to bathing water quality and bathers' health.
- (2) The bodies are:
- (a) the appropriate agency;
 - (b) a sewerage undertaker;
 - (c) a local authority.
- (3) The appropriate agency must promptly or, in the case of a cyanobacterial proliferation under paragraph (1)(b), immediately—
- (a) consult—
 - (i) the local authority that controls the bathing water, and
 - (ii) if necessary, the local sewerage undertaker;
 - (b) use appropriate media and technologies to actively and promptly disseminate information to the public, in such languages as are appropriate, and take such other appropriate agency management measures as it considers appropriate, to prevent exposing bathers to identified or presumed health risks.
- (4) The sewerage undertaker must, if necessary, promptly consult—
- (a) the appropriate agency, and
 - (b) the local authority that controls the bathing water.
- (5) The local authority must promptly or, in the case of a cyanobacterial proliferation under paragraph 1(b), immediately—
- (a) consult the appropriate agency so far as necessary;
 - (b) notify the local sewerage undertaker, if necessary;
 - (c) ensure that appropriate information is actively disseminated and promptly made available to the public during the bathing season in an easily accessible place in the near vicinity of the bathing water, and take such other local authority management measures as it considers appropriate, to prevent exposing bathers to identified or presumed health risks; and
 - (d) in the case of pollution by waste, remove the waste.

Additional management measures at “poor” bathing waters

- 13.—**(1) Where the appropriate agency classifies a bathing water as “poor” under regulation 11—
- (a) the appropriate agency must, during the bathing season following this classification—

- (i) take or cause to be taken appropriate agency management measures at the bathing water to prevent, reduce or eliminate (as appropriate) the causes of pollution;
 - (ii) take, or cause to be taken appropriate agency management measures at the bathing water as it considers adequate with a view to preventing bathers' exposure to pollution;
 - (iii) notify the local authority that controls the bathing water; and
 - (iv) identify the reasons why the bathing water failed to achieve a classification of "sufficient";
- (b) the local authority that controls the bathing water must issue an advice against bathing at that bathing waters, and must take such local authority management measures as it considers adequate, with a view to preventing bathers' exposure to pollution.
- (2) The appropriate agency must issue permanent advice against bathing in respect of a bathing water if—
- (a) the appropriate agency has classified the bathing water as "poor" under regulation 11 for five consecutive years; or
 - (b) having consulted the local authority that controls the bathing water, the appropriate agency advises the appropriate Minister that it considers that it would be infeasible or disproportionately expensive for the bathing water to achieve a classification of "sufficient" and the appropriate Minister accepts that advice.
- (3) Where permanent advice against bathing has been issued under paragraph (2) in relation to a bathing water, the appropriate agency must—
- (a) notify the local authority that controlled the former bathing water—
 - (i) that permanent advice against bathing has been issued there, giving reasons; and
 - (ii) that it is no longer a bathing water; and
 - (b) use appropriate media and technologies including the internet to actively and promptly disseminate all the following information to the public, in such languages the appropriate agency considers appropriate, in relation to the former bathing water—
 - (i) that permanent advice against bathing has been issued there;
 - (ii) the fact that it is no longer a bathing water;
 - (iii) the reasons for its declassification.
- (4) When a local authority has received notification under paragraph (3)(a), it must ensure that the following information in relation to the former bathing water is actively disseminated and promptly made available to the public in an easily accessible place in the near vicinity of that former bathing water during the bathing season—
- (a) that permanent advice against bathing has been issued there, represented by a symbol in accordance with Part 1 of the Annex to the Decision;
 - (b) the fact that it is no longer a bathing water;
 - (c) the reasons for the declassification.

Public information and general provisions about short-term pollution

14.—(1) This regulation applies where, having consulted the local authority that controls a bathing water, the appropriate agency has established relevant procedures for short-term pollution at the bathing water.

- (2) The appropriate agency must—
- (a) ensure that the bathing water profile established under regulation 7 contains—
 - (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 appropriate agency management measures taken and the time schedule for the elimination of the causes of the short-term pollution; 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;
- (b) notify the local authority that controls the bathing water when short-term pollution is predicted there; and
- (c) publish on its website the following information—
 - (i) the conditions likely to lead to short-term pollution at the bathing water;
 - (ii) the likelihood of short-term pollution there and its likely duration;
 - (iii) the causes of short-term pollution there;
 - (iv) the relevant procedures for short-term pollution in place there; and
 - (v) the information referred to in paragraph (3).
- (3) The local authority must ensure that the following information is actively disseminated and promptly made available to the public during the bathing season in an easily accessible place in the near vicinity of the bathing water—
 - (a) an indication of the number of days for which advice against bathing was issued there during the immediately preceding bathing season because of short-term pollution; and
 - (b) a warning whenever short-term pollution is predicted or present there.
- (4) In the event of short-term pollution, the appropriate agency must take one additional sample, as soon as possible after the pollution incident is presumed to have ended, to verify that it has in fact ended.
- (5) The appropriate agency may disregard samples taken during short-term pollution from the set of bathing water quality data for the bathing water if—
 - (a) as soon as possible after the end of a short-term pollution incident, the appropriate agency has taken the additional sample required by paragraph (4) in order to verify that the incident has ended;
 - (b) the appropriate agency has not included that sample in the set of bathing water quality data for the bathing water; and
 - (c) seven days after the end of a short-term pollution incident, the appropriate agency has, if necessary, taken an additional sample to ensure that it has the minimum number required for the bathing water for the bathing season.
- (6) The appropriate agency must not classify the bathing water under regulation 11 as “sufficient”, “good” or “excellent” unless the number of samples disregarded under paragraph (5) represents no more than the greater of—
 - (a) 15% of the total number of samples provided for in the monitoring calendars established under paragraph 2 of Schedule 4 for the same period; and
 - (b) one sample per bathing season.

Relevant procedures for short-term pollution

15. Where there is short-term pollution at a bathing water to which regulation 14 applies—

- (a) the appropriate agency must—
 - (i) notify the local authority that controls the bathing water, and
 - (ii) operate, or cause to be operated, any relevant procedures for short-term pollution which are not in operation and for which it is responsible;
- (b) the local authority must—
 - (i) take the local authority management measures which form part of the relevant procedures for short-term pollution there; and

- (ii) ensure that notification that the bathing water is affected by short-term pollution is actively disseminated and promptly made available to the public during the bathing season in an easily accessible place in the near vicinity of the bathing water.

PART 6

FINAL PROVISIONS

Enforcement

16.—(1) If the appropriate Minister becomes aware that a local authority has failed in its duties under these Regulations, the appropriate Minister may by notice to the local authority specify—

- (a) measures that the local authority must take to ensure that the local authority complies with these Regulations; and
- (b) the deadline by which those measures must be taken.

(2) If the appropriate Minister becomes aware that a private operator has caused or is continuing to cause a local authority to fail in its duties under these Regulations, the appropriate Minister may by notice to the private operator specify—

- (a) measures that the private operator must take; and
- (b) the deadline by which those measures must be taken.

(3) The appropriate Minister must consider any representations about the notice received from the local authority or private operator to whom the notice is addressed, and may amend or withdraw the notice.

(4) If the specified measures have not been taken by the specified deadline, the appropriate Minister may—

- (a) take the measures; or
- (b) apply to the High Court for an order requiring (as the case may be)—
 - (i) the local authority to comply with the notice or otherwise carry out its duties under these Regulations; or
 - (ii) the private operator to comply with that notice.

(5) Section 108 of the Environment Act 1995^(a) (powers of enforcing authorities and persons authorised by them) has effect in relation to England and Wales as if—

- (a) “pollution control functions” in relation to the Secretary of State, the Welsh Ministers, the Environment Agency and the Natural Resources Body for Wales included their respective functions under these Regulations; and
- (b) the powers in paragraph (4) of that section included the power to take any measure required of a local authority under these Regulations.

(6) Section 202(2) of the Water Resources Act 1991^(b) (information in connection with the control of pollution) has effect as if it conferred power on the Secretary of State, the Welsh Ministers, the Environment Agency and the Natural Resources Body for Wales to require the furnishing of information reasonably required for the purposes of giving effect to the Bathing Water Directive.

(7) In this regulation, “private operator” means a person, other than a local authority, who controls the relevant land in relation to a bathing water.

(a) 1995 c.25, as amended by W.S.I 2013/755 (W. 90); there are other amending instruments but none is relevant.
 (b) 1991 c.57, as amended W.S.I 2013/755 (W. 90).

Guidance

17. The appropriate Minister may give guidance to the appropriate agency or any local authority with respect to the practical implementation of the Bathing Water Directive, and the appropriate agency or local authority (as the case may be) to whom guidance is given must have regard to it.

Amendment of the Bathing Waters (Classification) Regulations 1991 and transitional provision

18.—(1) In the Bathing Waters (Classification) Regulations 1991(a), in regulation 2(4), for the words from “Schedule 3” to the end substitute “Schedule 4 to the Bathing Water Regulations 2013.”

(2) Every notice served, or deemed to have been served, on the appropriate agency under section 83 of the Water Resources Act 1991(b) (water quality objectives) in relation to classification BW1, and every notice which has effect as if so served, has effect subject to the transitional provision in paragraph (1).

(3) The National Rivers Authority (Bathing Waters) Directions 1992(c) have effect as if—

- (a) the only entries in the Annex to Council Directive 76/160/EEC concerning the quality of bathing water(d) were intestinal enterococci or *Escherichia coli*; and
- (b) conformity with the values which appear in column G of that Annex were met where—
 - (i) at least 90% of samples of waters taken and tested in accordance with these Regulations for intestinal enterococci meet the parametric value of 100 per 100 millilitres; and
 - (ii) at least 80% of samples of waters taken and tested in accordance with these Regulations for *Escherichia coli* meet the parametric value of 100 per 100 millilitres.

(4) Until the appropriate agency classifies a bathing water under regulation 11, for the purposes of regulation 9, the appropriate agency must, subject to the transitional provision in this regulation, classify the bathing water by reference to whether it conforms to the values in column I or G of the Annex to Council Directive 76/160/EEC.

Revocations, other amendments and savings

19.—(1) The Bathing Water Regulations 2008(e) are revoked.

(2) The Bathing Waters (Classification) Regulations 1991 and the Bathing Waters (Classification) (England) Regulations 2003(f) are revoked.

(3) In the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003(g), in Schedule 2 (enactments), in Part 2 (subordinate instruments)—

- (a) omit paragraphs 11 and 26;

(a) S.I. 1991/1597, as amended by S.I. 2008/1097. The Bathing Water (Classification) Regulations 1991 will be revoked by paragraph (2) of regulation 19 when that paragraph comes into force.

(b) 1991 c.57, as amended by W.S.I. 2013/755 (W. 90).

(c) Copies are available from the Department for Environment, Food and Rural Affairs, Bathing Waters Team, Area 3D Nobel House, 17 Smith Square, London SW1P 3JR. By virtue of section 2(1)(a)(ii) of the Environment Act 1995 (c. 25), the National Rivers Authority’s functions under or by virtue of Part III of the Water Resources Act 1991 (c. 57) in respect of the control of pollution of water resources in England and Wales were transferred to the Environment Agency. The National Rivers Authority (Bathing Waters) Directions 1992 (“the Direction”) deal with the exercise of functions under that Part. Section 55(3),(4)(d) and (6) of the Environment Act 1995 have the effect that the Direction applies as if given to the Environment Agency. In relation to Wales, the Environment Agency’s functions under the relevant provisions of Part III of the Water Resources Act 1991 were subsequently transferred to the Natural Resources Body for Wales by virtue of article 4(1) of, and paragraphs 272 to 274 of Schedule 2 to, the Natural Resources Body for Wales (Functions) Order 2013 (W.S.I. 2013/755 (W. 90)). Article 10 of, and paragraphs 2(3) and (4) of Schedule 7 to, that Order have the effect that, in relation to Wales, the Direction applies as if given to the Natural Resources Body for Wales.

(d) OJ No L 31, 5.2.1976, p.1, as last amended by Regulation (EC) No 1137/2008 of the European Parliament and of the Council (OJ No L 311, 21.11.2008, p.1).

(e) S.I. 2008/1097, as amended by W.S.I. 2013/755 (W. 90).

(f) S.I.2003/1238.

(g) S.I. 2003/3242, as amended by S.I. 2008/1097, 2007/3538, 2010/675, 2011/556; W.S.I. 2013/755 (W. 90).

- (b) omit paragraph 29;
- (c) after paragraph 32 insert—
“(33). The Bathing Water Regulations 2013”.

(4) In the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004^(a), in Schedule 2 (enactments), in Part 2 (subordinate instruments)—

- (a) omit paragraphs 11 and 26;
- (b) for paragraph 28 substitute—
“(28). The Bathing Water Regulations 2013.”

Review

20.—(1) Before the end of each review period, the Secretary of State must—

- (a) carry out a review of these Regulations as they apply to England;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as reasonable, have regard to how the Bathing Water Directive is implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved in a less burdensome way.

(4) In this regulation “review period” means the period of five years beginning with the day on which this regulation comes into force, and, subject to paragraph (5), each successive period of five years.

(5) If a report under this regulation is published before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is published.

1st July 2013

Richard Benyon
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

3rd July 2013

Alun Davies
Minister for Natural Resources and Food, one of the Welsh Ministers

^(a) S.I. 2004/99.

SCHEDULE 1

Regulation 2

DEFINITIONS FROM THE WATER FRAMEWORK DIRECTIVE

“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 territorial waters is measured^(a), extending where appropriate up to the outer limit of transitional waters.

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

“Lake” means a body of standing inland surface water.

“River” means a body of inland water flowing for the most part on the surface of the land but which may flow underground for part of its course.

“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.

“Transitional waters” are bodies of surface water in the vicinity of river mouths which are partly saline in character as a result of their proximity to coastal waters but which are substantially influenced by freshwater flows.

SCHEDULE 2

Regulation 3

SURFACE WATERS IDENTIFIED IN ENGLAND AND WALES

PART 1

Surface Waters in England^(b)

Allonby South	Amble Links	Anderby
Anstey's Cove (Torquay)	Askam-in-Furness	Babbacombe
Bamburgh Castle	Bantham	Beachlands Central
Beachlands West	Beacon Cove	Beadnell
Beer	Bembridge	Berrow North of Unity Farm
Bexhill	Bigbury-on-Sea North	Bigbury-on-Sea South
Birling Gap	Bispham	Blackpool Central
Blackpool North	Blackpool Sands	Blackpool South
Blue Anchor West	Blyth South Beach	Bognor Regis (Aldwick)
Bognor Regis East	Botany Bay (Broadstairs)	Bournemouth Alum Chine
Bournemouth Boscombe Pier	Bournemouth Durley Chine	Bournemouth Fisherman's Walk
Bournemouth Hengistbury	Bournemouth Pier	Bournemouth Southbourne

(a) The relevant baseline, for the purposes of this definition and the definition of “inland water”, is that from which the breadth of the territorial sea is measured and is established by section 1 of the Territorial Sea Act 1987 (c.49) and the Territorial Waters Order in Council 1964 (1965 III, p.6452A).

(b) Further details of the location and extent of a bathing water in England are available on request by contacting the Department for Environment, Food and Rural Affairs, Bathing Waters Team, Area 3D Nobel House, 17 Smith Square, London SW19 3JR.

West		
Bovisand	Bowleaze Cove	Bracklesham Bay
Breakwater Beach (Shoalstone)	Brean	Bridlington North Beach
Bridlington South Beach	Brightlingsea	Brighton Central
Brighton Kemptown	Broadsands	Broadstairs (Stone Bay)
Broadstairs (Viking Bay)	Bude Crooklets	Bude Sandy Mouth
Bude Summerleaze	Budleigh Salterton	Burnham Jetty
Caister Point	Calshot	Camber
Carbis Bay Porth Kidney Sands	Carbis Bay Station Beach	Cawsand
Cayton Bay	Challaborough	Chapel Porth
Chapel St Leonards	Charlestown	Charmouth West
Christchurch Avon Beach	Christchurch Bay	Christchurch Friar's Cliff
Christchurch Highcliffe Castle	Christchurch Mudeford Sandbank East	Church Cove
Church Ope Cove	Clacton	Clacton (Groyne 41)
Clacton Beach Martello Tower	Cleethorpes	Clevedon Beach
Cleveleys	Colwell Bay	Colwick Country Park (West Lake)
Combe Martin	Combesgate Beach, Woolacombe	Compton Bay
Constantine Bay	Cotswold Country Park and Beach	Coverack
Cowes	Crackington Haven	Crantock
Crimdon	Crinnis Golf Links	Crinnis Leisure Centre
Cromer	Croyde Bay	Danes Dyke, Flamborough
Dartmouth Castle and Sugary Cove	Dawlish Coryton Cove	Dawlish Town
Dawlish Warren	Daymer Bay	Deal Castle
Dovercourt	Downderry	Druridge Bay North
Druridge Bay South	Dunster North West	Duporth
Durdle Door East	Durdle Door West	Dymchurch
East Looe	East Runton	Eastbourne
Eastney	Eastoke	Exmouth
Eypemouth	Felixstowe North	Felixstowe South
Felpham	Filey	Fistral
Flamborough South Landing	Fleetwood	Folkestone
Formby	Fraisthorpe	Frensham Great Pond
Frinton	Goodrington	Gorleston Beach
Gorran Haven (Vault)	Gorran Haven Little Perhaver	Great Western
Great Yarmouth North	Great Yarmouth Pier	Great Yarmouth South
Gurnard	Gyllyngvase	Hampstead Heath (Ladies Pond)
Hampstead Heath (Men's Pond)	Hampstead Heath (Mixed Pond)	Harlyn Bay
Hartland Quay	Hastings	Haverigg
Heacham	Hemsby	Herne Bay
Herne Bay Central	Highcliffe	Hillhead
Hive	Holland	Hollicombe
Holywell Bay	Hope Cove	Hornsea
Hove	Humberston Fitties	Hunstanton Main Beach
Hunstanton (Old Hunstanton)	Hythe	Ilfracombe Hele
Ilfracombe Tunnels Beach	Ilfracombe Wildersmouth	Ingoldmells South

Instow	Jaywick	Joss Bay (Broadstairs)
Kennack Sands	Kimmeridge Bay	Kingsand
Ladram Bay	Lancing, Beach Green	Lee-on-Solent
Leigh Bell Wharf	Lepe	Leysdown
Littlehampton	Littlestone	Low Newton
Lowestoft (North of Claremont Pier)	Lowestoft (South of Claremont Pier)	Lulworth Cove
Lusty Glaze	Lyme Regis Church Cliff Beach	Lyme Regis Front Beach
Lynmouth	Mablethorpe Town	Maenporth
Maidencombe	Margate Fulsam Rock	Margate The Bay
Marsden	Marske Sands	Mawgan Porth
Meadfoot	Meols	Middleton-on-sea
Milford-on-sea	Mill Bay	Millendreath
Minehead Terminus	Minnis Bay (Birchington)	Minster Leas
Moggs Eye	Morecambe North	Morecambe South
Moreton	Mothecombe	Mother Ivey's Bay
Mounts Bay Heliport	Mounts Bay Marazion	Mounts Bay Penzance
Mounts Bay Wherry Town	Mundesley	Ness Cove
Newbiggin North	Newbiggin South	Newhaven
Norman's Bay	Oddicombe	Pagham
Paignton Paignton Sands	Paignton Preston Sands	Par
Pendower	Pentewan	Perranporth Penhale Sands
Perranporth Village End	Perranuthnoe	Pevensey Bay
Plymouth Hoe East	Plymouth Hoe West	Poldhu Cove
Polkerris	Polstreath	Polurrian Cove
Polzeath	Poole Branksome Chine	Poole Canford Cliffs Chine
Poole Harbour Lake	Poole Harbour Rockley Sands	Poole Sandbanks Peninsular
Poole Shore Road Beach	Porlock Weir	Porth
Porthallow	Porthcothan	Porthcurnick
Porthcurno	Porthgidden	Porthleven West
Porthluney	Porthmeor	Porthminster
Porthoustock	Porthpean	Porhtowan
Portland Harbour Castle Cove	Portland Harbour Sandsfoot Castle	Portmellon
Portreath	Portwrinkle	Praa Sands East
Praa Sands West	Putsborough	Ramsgate Sands
Ramsgate Western Undercliffe	Readymoney	Redcar Coatham
Redcar Granville	Redcar Lifeboat Station	Redcar Stray
Reighton	Ringstead Bay	Roan Head
Robin Hoods Bay	Rock	Roker - Sunderland
Runswick Bay	Ryde	Salcombe North Sands
Salcombe South Sands	Saltburn	Saltdean
Sandgate	Sandown	Sandsend
Sandwich Bay	Sandy Bay	Saunton Sands
Scarborough North Bay	Scarborough South Bay	Sea Palling
Seaburn – Sunderland	Seaford	Seagrove
Seaham Beach	Seaham Hall Beach	Seahouses North
Seascale	Seaton (Cornwall)	Seaton (Devon)
Seaton Carew Centre	Seaton Carew North	Seaton Carew North Gare
Seaton Sluice	Seatown	Selsey
Sennen	Shaldon	Shanklin
Sheerness	Shell Bay North	Sheringham

Shoebury East	Shoeburyness	Sidmouth Jacobs Ladder
Sidmouth Town	Silecroft	Silloth
Skegness	Skipsea	Slapton Sands Monument
Slapton Sands Torcross	South Shields	Southend Chalkwell
Southend Jubilee	Southend Thorpe Bay	Southend Three Shells
Southend Westcliff Bay	Southport	Southsea
Southwick	Southwold The Denes	Southwold The Pier
Spittal	St Annes	St Annes North
St Bees	St Helens	St Leonards
St Margaret's Bay	St Mary's Bay (Devon)	St Mary's Bay (Kent)
St Mildreds Bay (Westgate)	Staithes	Stokes Bay
Studland Knoll House	Sutton-on-Sea	Swanage Central
Swanpool	Tankerton	Teignmouth Holcombe
Teignmouth Town	The Serpentine - Hyde Park	The Towans (Godrevy)
The Towans (Hayle)	Thurlestone North	Thurlestone South
Tolcarne	Torre Abbey	Totland Bay
Towan	Trebarwith Strand	Trevaunance Cove
Trevone Bay	Treyarnon Bay	Tunstall
Tynemouth Cullercoats	Tynemouth King Edwards Bay	Tynemouth Long Sands North
Tynemouth Long Sands South	Ventnor	Wallasey
Walney Biggar Bank	Walney Sandy Gap	Walney West Shore
Walpole Bay (Margate)	Walton	Warkworth
Watcombe	Watergate Bay	Wells
Wembury	West Bay (West)	West Bay (Westgate)
West Beach, Whitstable	West Kirby	West Mersea
West Wittering	Westbrook Bay (Margate)	Weston Main
Weston-super-Mare Sand Bay	Weston-super-Mare Uphill	Westward Ho!
	Slipway	
Weymouth Central	Weymouth Lodmoor	Whitby
Whitecliff Bay	Whitley Bay	Whitsand Bay (Sharrow)
Widemouth Sand	Wilthorpe	Winchelsea
Windermere, Fellfoot	Windermere, Lakeside YMCA	Windermere, Millerground
		Landing
Withernsea	Woolacombe Village	Worthing
Yaverland		

PART 2

Surface Waters in Wales(a)

Aberafan	Aberdaron	Aberdyfi
Abereiddy	Aberffraw	Abergele (Pensarn)
Abermawr	Aberporth	Abersoch
Aberystwyth North	Aberystwyth South	Amroth Central
Barafundle	Barmouth	Benllech
Borth	Borth Wen	Bracelet Bay
Broad Haven (Central)	Broad Haven South	Caerfai
Castle Beach Tenby	Caswell Bay	Cemaes
Church Bay	Cilborth	Clarach South

(a) Further details of the location and extent of a bathing water in Wales are available on request by contacting the Welsh Government, Water Branch, Cathays Park, Cardiff, CF10 3NQ.

Cold Knap	Colwyn Bay	Coppet Hall
Craig Du Central	Criccieth	Dale
Druidston Haven	Dyffryn (Llanendwyn)	Fairbourne
Freshwater East	Freshwater West	Harlech
Jackson's Bay Barry Island	Kinnel Bay (Sandy Cove)	Langland Bay
Limeslade Bay	Little Haven	Llandanwg Central
Llanddona	Llanddwyn	Llandudno North
Llandudno West	Llanfairfechan	Llangrannog
Llanrhystud	Lydstep	Manorbier
Marine Lake, Rhyl	Marloes Sands	Morfa Dinlle
Morfa Nefyn	Mwnt	New Quay Harbour
New Quay North	Newgale	Newport
Nolton Haven	Oxwich Bay	Pembrey
Penally	Penbryn	Pendine
Penmaenmawr	Poppit Sands	Port Eynon
Porth Dafarch	Porth Neigwl	Prestatyn Central
Pwllheli	Rest Bay	Rhosneigr
Rhossili	Rhyl	Sandy Bay
Sandy Haven	Saundersfoot	Silver Bay, Rhoscolyn
Southerndown	St. Davids, Benllech	Swansea Bay
Talybont	Tenby North	Tenby South
Traeth Gwyn New Quay	Traeth Lligwy	Trearddur Bay
Trecco Bay	Tresaith	Tywyn
West Angle	Whitesands	Whitmore Bay Barry Island
Wiseman's Bridge		

SCHEDULE 3

BATHING WATER PROFILES

Regulation 7

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; and
 - (e) identify the location of the monitoring point.
- (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 11, the appropriate agency must review, and if necessary update, the bathing water profile, taking

into account the nature and severity of the pollution which affects the bathing water and at the following minimum frequency—

- (a) if classified as “poor”, every two years;
- (b) if classified as “sufficient”, every three years; and
- (c) if classified as “good”, every four years.

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

SCHEDULE 4 MONITORING ETC

Regulation 8

PART 1

INTESTINAL ENTEROCOCCI AND ESCHERICHIA COLI

Location of monitoring point

1. The appropriate agency must—

- (a) at every bathing water, locate the monitoring point where most bathers are expected; and
- (b) subject to paragraph 7, where possible, take samples 30 centimetres below the water’s surface and in water at least one metre deep.

Monitoring calendar

2.—(1) The appropriate agency must—

- (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 any abnormal situation, the appropriate agency—

- (a) may suspend the monitoring calendar for the duration of the situation; and
- (b) as soon as possible after the end of the situation, must 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

3. The appropriate agency must—

- (a) take and analyse the first sample for every bathing season shortly before the start of that season; and
- (b) take and analyse samples at intervals not exceeding one month, from every bathing water throughout the bathing water season.

Sampling equipment

4.—(1) Subject to paragraph 7, the appropriate agency must only use sampling bottles which—

- (a) have been—

- (i) sterilised in an autoclave for at least 15 minutes at 121 degrees Celsius;
 - (ii) dry sterilised at no lower than 160 degrees Celsius and no higher than 170 degrees Celsius for at least one hour; or
 - (iii) irradiated by their manufacturer and not used previously;
 - (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 appropriate agency must—
- (a) use aseptic techniques 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

- 5.—(1) Subject to paragraph 7, the appropriate agency must—
- (a) at all times, protect every sample taken from exposure to light, and in particular, direct sunlight; and
 - (b) conserve every sample at a temperature of around 4 degrees Celsius between sampling and laboratory analysis.
- (2) In relation to any sample, if the interval between sampling and laboratory analysis is likely to exceed four hours, the appropriate agency must conserve the sample in a refrigerator.
- (3) The appropriate agency must ensure that the time between sampling and laboratory analysis does not exceed 24 hours and must use its best endeavours to keep this time as short as possible.

Reference methods of analysis

- 6.—(1) Subject to paragraph 7, the appropriate agency must use the following reference methods of analysis—
- (a) for intestinal enterococci, one of the following standards of the International Organization for Standardization—
 - (i) ISO 7899-1:1998 (water quality, detection and enumeration of intestinal enterococci, Part 1, miniaturized method, most probable number, for surface and waste water) as amended by Cor 1:2000, or
 - (ii) ISO 7899-2:2000 (water quality, detection and enumeration of intestinal enterococci, Part 2, membrane filtration method); and
 - (b) for *Escherichia coli*, one of the following standards of the International Organization for Standardization—
 - (i) ISO 9308-1:2000 (water quality, detection and enumeration of *Escherichia coli* and coliform bacteria, Part 1, membrane filtration method) as amended by Cor 1:2007, or
 - (ii) ISO 9308-3:1998 (water quality, detection and enumeration of *Escherichia coli* and coliform bacteria, Part 3, miniaturized method, most probable number, for the detection and enumeration of *E. coli* in surface and waste water) as amended by Cor 1:2000.

General provisions in relation to rules or reference methods of analysis

7. The appropriate agency—
- (a) must have regard to the guidelines on the handling of samples for microbiological analyses given in Annex V to the Bathing Water Directive; and
 - (b) may use such rules or reference methods of analysis as it considers are substantively equivalent to those specified in this Schedule, where the appropriate agency has

notified the appropriate Minister giving details of such rules and methods and their equivalence.

PART 2

CYNOBACTERIA

8. Where any bathing water profile indicates a potential for cyanobacterial proliferation, the appropriate agency must undertake appropriate monitoring at the bathing water at the frequency necessary to allow adequate management measures to be put in place in accordance with regulation 12.

PART 3

MACRO-ALGAE AND MARINE PHYTOPLANKTON

9. Where any bathing water profile indicates a tendency for proliferation of macro-algae or marine phytoplankton, the appropriate agency must undertake investigations at the bathing water to allow adequate management measures to be put in place in accordance with regulation 12.

PART 4

WASTE

10. The appropriate agency must undertake visual inspections at every bathing water at the frequency necessary to allow adequate management measures to be put in place in accordance with regulation 12.

SCHEDULE 5

Regulation 11

CLASSIFICATION

Standards

1. The appropriate agency 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 ⁽¹⁾	200 ⁽²⁾	400 ⁽²⁾	330 ⁽³⁾
<i>Escherichia coli</i> ⁽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

<i>Parameter</i>	<i>“Excellent”</i>	<i>“Good”</i>	<i>“Sufficient”</i>
Intestinal enterococci ⁽¹⁾	100 ⁽²⁾	200 ⁽²⁾	185 ⁽³⁾
<i>Escherichia coli</i> ⁽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 \log_{10} normal probability density function of microbiological data used for the assessment under regulation 10.

(2) The appropriate agency must derive a percentile value as follows—

- (a) take the \log_{10} value of all bacterial concentrations in the data sequence to be evaluated or, if a zero value is obtained, take the \log_{10} value of the minimum detection limit of the analytical method used;
- (b) calculate the arithmetic mean (“ μ ”) of the \log_{10} values taken under paragraph (a);
- (c) calculate the standard deviation (“ σ ”) of the \log_{10} values 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 ($\mu + 1.282 \sigma$); and
- (e) derive the upper 95-percentile point of the data probability density function from the following equation: upper 95-percentile = antilog ($\mu + 1.65 \sigma$).

Classification

3.—(1) At the end of every bathing season, the appropriate agency must classify a 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.

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

- (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 appropriate agency must classify a 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 appropriate agency must classify a 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.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Bathing Water Regulations 2008 and implement, in England and Wales only, 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 (OJ L64, 4.3.2006, p.37) (“the Bathing Water Directive”). The Bathing Water Directive is available from the Europa website:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006L0007:EN:NOT>.

These Regulations also implement Commission Implementing Decision 2011/321/EU establishing, pursuant to Directive 2006/7, a symbol for information to the public on bathing water classification and any bathing prohibition or advice against bathing (OJ No L 143, 31.5.2011, p.38) (“the Decision”).

Regulation 2(1) sets out various definitions including the definition of bathing waters which are defined as surface waters that are identified under regulation 3 and listed in Schedule 2, and at which no permanent advice against bathing is currently in force under regulation 13. Regulation 2(1) refers to the definitions in Schedule 1 which have the same meaning as in Directive 2006/60 EC of the European Parliament and of the Council establishing a framework for community action in the field of water policy.

Regulation 3 provides for specified criteria which must be applied to the identification of such surface waters and other matters which must be given consideration. Regulation 3 also provides that the Secretary of State and the Welsh Ministers must also publish, annually, before the start of the bathing season, a list of all bathing waters within their respective areas, and a list of all surface waters at which permanent advice against bathing has been issued (and which are therefore no longer bathing waters). A copy of the English list (including a list of the names by which some bathing waters were formerly known) may be obtained from , or inspected on request in writing to the Department for Environment, Food and Rural Affairs, Bathing Waters Team, Area 3D Nobel House, 17 Smith Square, London SW19 3JR, by emailing bathingwater@defra.gsi.gov or by downloading from the Department's website at www.gov.uk/defra. A copy of the Welsh list may be obtained on request by writing to the Welsh Government, Water Branch, Cathays Park, Cardiff, CF10 3NQ, by emailing water@wales.gsi.gov.uk or by downloading from the Welsh Government's website at www.wales.gov.uk.

Regulation 4 provides that the bathing season lasts from 15th May to 30th September each year.

Regulation 5 provides for the classification of "sufficient" as the minimum standard to be achieved for all bathing waters by the end of the 2015 bathing season.

Regulation 6 sets out duties in relation to public participation, imposed on the Secretary of State, the Welsh Ministers and 'the appropriate agency' (defined in regulation 2(1) as the Environment Agency in relation to surface waters in England, and the Natural Resources Body for Wales (known as 'Natural Resources Wales') in relation to surface waters in Wales) in order to secure compliance with the Bathing Water Directive.

Under regulation 7, the appropriate agency must establish a bathing water profile for every bathing water. Copies of bathing water profiles in relation to English bathing waters are available from the Environment Agency, National Customer Contact Centre, PO Box 544, Rotherham S60 1BY, by emailing enquiries@environment-agency.gov.uk or from the Agency's website at www.environment-agency.gov.uk/contactus/default.aspx. Copies of bathing water profiles in relation to Welsh bathing waters are available from Natural Resources Wales, Strategic Water Quality and Planning, Ty Cambria, 29 Newport Road, Cardiff, CF24 0TP, by emailing enquiries@naturalresourceswales.gov.uk or from Natural Resources Wales' website at www.naturalresourceswales.gov.uk

Under regulation 8 (and Schedule 4), the appropriate agency must establish a suitable monitoring programme for every bathing water.

Regulation 9 provides for the dissemination of the specified information by local authorities and gives effect to signage requirements in the Decision. It also provides that the appropriate agency must disseminate the specified information using appropriate media and technologies.

Under regulations 10 and 11, the appropriate agency must assess the bathing water quality data gathered under its monitoring programme and classify each bathing water as "poor", "sufficient", "good" or "excellent". The meaning of each classification is set out in Schedule 5.

Regulation 12 provides for the management measures which the appropriate agency, sewerage undertakers and local authorities must take in the event of certain pollution events occurring at a bathing water. It also imposes express obligations on the appropriate agency and local authorities to inform the public when such events occur.

Regulation 13 requires the appropriate agency in specified circumstances to issue permanent advice against bathing at a bathing water. The regulation also provides for express obligations on

the appropriate agency and local authorities for publicising the advice and the reasons for declassification of the former bathing water.

Regulations 14 and 15 set out the obligations on the appropriate agency and local authorities to make specified information available to the public in relation to ‘short-term pollution’ (as defined in regulation 2(1)) at relevant bathing waters.

Regulation 16 contains enforcement provisions and sets out the measures which the appropriate Minister may take against a local authority or private operator.

Regulation 17 states that the appropriate Minister may give guidance to the appropriate agency or any local authority regarding the implementation of the Bathing Water Directive.

Regulation 18 contains transitional provisions.

Regulation 19 revokes the Bathing Water Regulations 2008 and amends with effect from 24th March 2015 certain legislation transposing Council Directive 76/160/EEC concerning the quality of bathing water (OJ No L31, 5.2.1976, p.1) which is repealed by the Bathing Water Directive.

Regulation 20 requires the Secretary of State to review the operation and effect of these Regulations in England and publish a report within five years and within every five years after that. Following a review it will fall to the Secretary of State to consider, in relation to England, whether these Regulations should remain as they are, or be revoked or amended. A further instrument would be needed to revoke or amend these Regulations.

A transposition note and full impact assessment of the effect that this instrument (including the impact assessment prepared in relation to the Bathing Water Regulations 2008) will have on the costs of business and the voluntary sector is available from the Department for Environment, Food and Rural Affairs, Bathing Waters Team, Area 3D Nobel House, 17 Smith Square, London SW19 3JR, by email to bathingwater@defra.gov.uk or from the Department’s website at www.gov.uk/defra. These documents are also available from the Welsh Government, Water Branch, Cathays Park, Cardiff, CF10 3NQ, by email to water@wales.gsi.gov.uk or from the Welsh Government’s website at www.wales.gov.uk.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Water Branch, Cathays Park, Cardiff, CF10 3NQ, by email to water@wales.gsi.gov.uk or from the Welsh Government’s website at www.wales.gov.uk.

Explanatory Memorandum to the Bathing Water (England and Wales) Regulations 2013

This Explanatory Memorandum has been prepared by the Department for Natural Resources & Food and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standard Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Bathing Water (England and Wales) Regulations 2013.

I am satisfied that the benefit outweigh any costs.

Alun Davies - Minister for Natural Resources and Food

28 June 2013

1. Description

These Regulations revoke and replace the Bathing Water Regulations 2008 (S.I. 2008/1097).

This remake of the Regulations remove the responsibilities from private owners of land adjacent to bathing water (small businesses, charities and other private persons in England and Wales) and give the relevant local authority responsibilities for the duties of the bathing water controller including responsibility for public information at the bathing water.

These Regulations bring into force Commission Implementing Decision 2011/321/EU of 27 May 2011, establishing, pursuant to Directive 2006/7/EC of the European Parliament and of the Council, a symbol for information to the public on bathing water classification and any bathing water advice against bathing. The Decision sets the symbols which are to be used at all bathing waters in Europe to advise the public on the quality of the water and advice against bathing for bathing waters where the water quality is poor. In Wales and England the “bathing prohibited” signs will not be used.

These Regulations also contain a number of changes to better reflect the exact wording of the Bathing Water Directive in response to a challenge from the Commission on the transposition of the Directive (2006/7/EC (OJ No L 64, 4.3.2006, p 37),

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

The legislation is being made on a composite basis as the Regulations are required to implement the Community law and it is desirable to have a common England and Wales regulatory regime which covers transposition of the Directive.

Section 3 of this Memorandum explains that these Regulations are made in reliance on section 2(2) of the European Communities Act 1972. By virtue of section 59(3) of the Government of Wales Act 2006, the Welsh Ministers are to determine whether an instrument made in exercise of the section 2(2) powers is to be subject to the negative or affirmative procedure.

This statutory instrument is subject to annulment of the Assembly (negative procedure). The Regulations do not amend any provision of an Assembly Act or Measure. They do not impose obligations of special importance. Accordingly, the Welsh Ministers have determined that these Regulations are to be subject to the negative resolution procedure.

3. Legislative background

The National Assembly for Wales was designated (for the purpose of section 2(2) of the European Communities Act 1972) in relation to measures relating to water resources by the European Communities (Designation) (No.4) Order 2003/2901. That designation is now a designation of the Welsh Ministers by virtue of sections 59 and 162 of, and paragraph 28 of Schedule 11 to, the Government of Wales Act 2006.

These Regulations are subject to the negative resolution procedure.

The Bathing Water Directive 2006/7/EC requires, amongst other requirements, public information on water quality to be displayed in the near vicinity of all designated bathing waters. The purpose of the Directive is to preserve, protect and improve the quality of the environment and to protect human health by complementing the Water Framework Directive 2000/60/EC.

There are currently 100 designated bathing waters in Wales, 90 of which are controlled by 12 different local authorities ("LAs"). Ten are privately controlled, by eight different private controllers. Over the last two years the Welsh Government has received a total of 40 applications for bathing water designations with 19 demonstrating the requirements of the Directive for designation. It is expected that this trend will continue.

From 15 May 2012 **all** bathing water controllers, both LAs and private controllers, have been required to display, during the bathing season, information/signage offering a brief description of sources of pollution affecting the bathing water quality at designated bathing water sites. These descriptions were based on Natural Resources Wales profiles and enable bathers to make an informed decision on where and when to bathe. The information includes:

- The bathing water classification (currently in accordance with the old Directive 76/160/EEC)
- Any advice against bathing that has been introduced there, with reasons;
- A general description of the bathing waters based on its bathing water profile;
- Information on abnormal situations and their expected duration; and
- Information on where to find more detailed information.
- Specified information/warnings concerning short-term pollution.

An additional requirement under the Directive will need to be met from the 2016 bathing season, whereby all bathing water controllers will be required to display the appropriate symbol for the bathing water classification ('excellent', 'good', 'sufficient' or 'poor'). This will show the classification received at the end of the previous year's bathing season. At bathing waters classified as 'poor', the symbol for 'advice against bathing' must also be displayed. It is also anticipated that the information at all designated bathing water sites will be subject to ongoing changes to ensure that bathers have the most recent information available to them.

In 2011, to assist bathing water controllers to meet their information obligations, the Welsh Government made funding available for all bathing waters in Wales that were so designated prior to the 2011 bathing season. This funding represented a one-off payment for the 88 bathing waters designated prior to the 2011 bathing season and does not apply to any newly designated bathing waters after that date. The funding

was intended to cover the full cost of providing the required signage so as to reduce the financial burden of the water quality information requirement on bathing water controllers. The expectation was that signage should already be in place for the 2012 information requirements set out in the Directive. The Welsh Government also made a recommendation that signs should include space for a moveable panel or sticker to be added in order to meet the additional information requirements that will apply from the 2016 bathing season, minimising any future costs to bathing water controllers.

4. Purpose & intended effect of the legislation

The current regulations require compliance with the Directive by a range of organisations, individuals and co-owners of bathing water sites. This means that in some cases the process of identifying a controller of a bathing water site can be complex. In these instances there is a risk of non-compliance with the requirements of the Directive, and potential infraction proceedings, due to lack of clarity about where responsibilities under the Bathing Water Regulations 2008 lie.

The principle difference between these Regulations and the Bathing Water Regulations 2008 is that responsibility for the duties of the bathing water controller (including responsibility for public information at the bathing water) is removed from private owners in England and Wales and is placed on the relevant local authority.

Going forward, with the additional information requirement under the Directive being introduced from the start of the 2016 bathing season, there is a risk that private controllers may not understand their obligations or may not be willing or able to meet the costs of displaying this information, especially if further privately controlled bathing waters become designated. This could lead to the water quality information not being made publicly available at certain designated bathing waters and could create a potential public health risk for bathers using the sites. It could also put Wales at risk of not fully complying with the Directive.

In addition, signs provided by a range of different organisations will lack consistency, making it more difficult for bathers to understand and compare information between bathing waters. **The regulatory change proposed in the regulatory impact assessment (RIA) is for control¹ of bathing waters to be transferred to LAs** where they are not currently the controller, making the provision of bathing water quality information more consistent across Wales. LAs would not be expected to

¹ The bathing water controller, under the Bathing Water Regulations 2008, has “*control of the land immediately adjacent to the bathing water which 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*” (Reg 2.1 (b)). The bathing water controller is responsible for providing the water quality information in the vicinity of designated bathing water sites.

assume any other management responsibilities at bathing waters over and above those set out in the Bathing Water Regulations 2008.

The objectives of the proposed regulatory change to bathing water controller responsibilities are:

- that all designated bathing waters display the water quality information required by the Directive as a minimum;
- that information is provided in such a way as to minimise costs and the administrative burden for all bathing water controllers, especially those currently defined as 'private controllers' (including small businesses, charities and individuals);
- there is consistency in presentation of the water quality information;
- that public information about water quality is displayed at bathing water sites to enable individuals to make informed decisions on where and when to bathe
- that the Welsh Government complies fully with the Directive

These Regulations implement the Commission Implementing Decision 2011/321/EU of 27 May 2011, establishing, pursuant to the revised Bathing Water Directive (2006/7/EC) of the European Parliament and of the Council, a symbol for information to the public on bathing water classification and any bathing water prohibition or advice against bathing

These Regulations also contain a number of changes when compared to the Bathing Water Regulations 2008 to ensure that the Regulations properly reflect the wording of the Bathing Water Directive 2006/7/EC in response to a challenge from the Commission on the transposition of that Directive .

5. Consultation

Details of the consultation are included in the Regulatory Impact Assessment.

PART 2 – REGULATORY IMPACT ASSESSMENT

Policy Options under Consideration

1. This RIA compares the proposed regulatory change option with the counterfactual 'do nothing' option, such that two options are presented in this RIA:
 - **Option 1** – 'Do nothing' baseline (counterfactual). Involves no change to current position, i.e. all responsibility rests with the current bathing water controllers, be they private or LAs, as per the current regulations.
 - **Option 2** – Regulatory change to transfer bathing water controller responsibility to LAs, requiring them to provide information at all designated bathing waters (including those that are privately controlled) in Wales.
2. The baseline number of designated bathing waters in Wales is 100 - the current (in August 2012) 90 that are the responsibility of LAs and the current 10 that are the responsibility of private controllers. It is assumed that, going forward, 10 new bathing waters will be designated each year.
3. The preferred option is Option 2, to introduce regulatory change that transfers bathing water controller responsibility from private owners to LAs. This is because the Welsh Government feels there is a risk of the required information not being provided at a number of privately controlled bathing waters, owing either to the cost and burden to small businesses and/or the willingness of private controllers to provide the information. It is important that the information requirements are adhered to in order to fully comply with the requirements of the Directive.
4. It is recommended that Option 2 is taken as the Welsh Government needs to take steps to ensure that the required information on water quality is provided at all bathing waters in Wales, both to enable bathers to make an informed decision about where and when to bathe and to comply with the Bathing Water Directive. Not providing this information would leave the public unaware of any potential problems with bathing water quality, which may pose a public health risk. In addition, it would mean that Wales would not be able to report full compliance with the signage elements of the Directive to the European Commission.
5. The signage requirements impose a duty of action and an associated cost on those who privately control designated bathing waters. These private owners may find it difficult and/or costly or be unwilling to provide the water quality information required by the Directive in the future – particularly once the additional signage requirements come into effect from the start of the 2016 bathing season. The burden on an individual controller of understanding and meeting the requirements of the Bathing Water Regulations 2008 (in order to procure and provide

appropriate signage at a single site) is greater than for an LA which is likely to have multiple sites and can benefit from 'economies of scale'.

6. It has been identified that in some circumstances there is a lack of clarity as to where controller responsibility rests, especially where bathing water sites are in co-ownership. The combination of this lack of clarity and the expected increase in requests for designation introduces a current and potentially growing risk of some private bathing water controllers failing to meet the requirements of providing public information on water quality at these sites.
7. The objectives of the proposed regulatory change, Option 2, are:
 - that all designated bathing waters display the water quality information required by the Bathing Waters Directive as a minimum;
 - that information is provided in such a way as to minimise costs and the administrative burden for all bathing water controllers, especially those currently defined as 'private controllers' (including small businesses, charities and individuals);
 - there is consistency in presentation of the water quality information;
 - that public information about water quality is displayed at bathing water sites to enable individuals to make informed decisions on where and when to bathe.

Costs and Benefits of each Option

Option 1 – 'Do Nothing'

8. Costs arising under the existing baseline fall mainly to local authorities ("LAs") and private controllers of designated bathing waters. The Welsh Government has already made funding available to LAs and private controllers with the intention of meeting the one-off costs of the water quality information requirements under the Bathing Water Regulations 2008 that came into force on 24 March 2012. It is thus assumed that all bathing water controllers have, or will have, claimed the necessary amount needed to meet their current signage obligations.
9. The main one-off cost to bathing water controllers under the 'do nothing' option is linked to the requirement to update their signs accordingly to meet the additional information obligations set out in the Directive, which will need to be in place from the start of the 2016 bathing season. It is assumed that, based on the Welsh Government recommendation made in 2011, all existing designated bathing water controllers will have taken these future changes into account and allowed for a moveable panel or sticker on their current signs in order to meet these additional information requirements. It is thus anticipated that the costs of meeting these requirements will be minimal.
10. However, where the advice from the Welsh Government has not been heeded, it is estimated that the one-off cost of producing a whole new sign to display all the

required information in 2016 could be up to £450² (current prices) for each designated bathing water site. As a maximum, if all the current 100 designated bathing water sites require new signs in 2016, along with the potential 10 new designations we estimate to have been made in each year between 2012 and 2015, the total one-off cost in 2016 could be up to £63,000 (140 x £450). These costs would fall to the relevant bathing water controllers under the 'do nothing' option (up to £6,300 to private controllers and up to £56,700 to LAs). However, it is assumed that a majority of controllers will have accounted for the known future additional signage requirements for 2016 and, as such, this estimated total cost is unlikely to be fully realised.

11. Potential recurring costs could arise for bathing water controllers under the 'do nothing' option, for instance when changes to signage is needed (e.g. maintenance or additional upgrading), although these are also expected to be minimal.
12. There is also a high potential cost associated with the 'do nothing' option if the bathing water quality information requirements under the Directive are not met. The potential difficulties associated with private controllers meeting their information obligations means that there is a potential risk of infraction. Therefore the 'do nothing' option is not preferable.

Option 2 – 'Regulatory Change'

13. Additional costs (relative to the baseline) arising under the proposed regulatory change (option 2) are expected to be minimal. Costs arising for private controllers under the 'do nothing' option will simply be transferred to LAs under option 2. LAs will be the group mainly affected by any additional costs arising from the proposed changes, with very minimal potential costs of enforcement arising for the Welsh Government.

Costs to Local Authorities

14. Since only 10 of the 100 currently designated bathing waters in Wales are privately owned, with approximately 10 new designations expected per annum, the proposed regulatory change is expected to have a minimal impact on LAs. Table 1 sets out the LAs which would be impacted by the proposals, in gaining additional controller responsibilities for currently designated bathing waters. Since all of the LAs shown in Table 1 already hold controller responsibilities, the additional costs arising under option 2 are expected to be minimal.

Table 1 – Number of bathing waters to be transferred to LA control

Local Authority	Number of bathing waters they would gain controller responsibility for
Pembrokeshire County Council	3

² This figure is based on an estimate provided in Defra's Impact Assessment of amendments to the definition of bathing water controller. We have added £60 to Defra's £390 per bathing water estimate, to account for additional bilingual obligations in Wales.

Bridgend County Borough Council	2
Isle of Anglesey County Council	1
Vale of Glamorgan County Council	1
City and County of Swansea	2
Carmarthen County Council	1

15. This RIA highlights that relatively small costs are involved with the proposed regulatory change and hence a 'light touch' approach to the analysis has been adopted.
16. Through the transfer of control of designated bathing waters, LAs will incur additional one-off costs when new privately-owned bathing waters are designated, through having to ensure water quality information is displayed within the vicinity. Under the 'do nothing' option this cost would fall to the private controller of the bathing water, so this is essentially a transfer of cost from one party to the other.
17. Table 2 shows the number of current and estimated future bathing water designations by type of controller. There are currently only 10 privately controlled designated bathing waters and it is estimated that only one privately controlled new designation will be made per annum, so the costs that will be transferred to LAs under option 2 are expected to be relatively minor. In terms of new designations, for example, LAs will pick up the additional annual cost of signage for the one new privately owned designation (£450), and the potential 2016 signage costs of the 10 privately owned current designations (£4,500).
18. Table 2 also suggests that there will not be any overall additional information provision costs arising under option 2 compared to the baseline, since signage costs will simply be transferred from private owners to LAs as controllers of designated bathing waters. The total signage costs are upper estimates based on *all* designated bathing waters requiring new water quality information signs in 2016 to fulfil the additional requirements of the Directive. In reality, the total cost is likely to be much lower, although the overall outcomes will be the same (i.e. the cost impact of the regulatory change is expected to be neutral).

Table 2 – Current and New Bathing Water Designations and Signage Costs by Controller (2012 prices)

	Current designations in 2012 (signage costs incurred in 2016)	New designations per annum (2012-2015)
Option 1		
Privately Controlled (number)	10	1
LA Controlled (number)	90	9
Total Signage Costs – Private	£4,500	£450
Total Signage Costs – LA	£40,500	£4050
Total signage costs by 2016	£45,000	£18,000

Option 2		
Privately Controlled (number)	0	0
LA Controlled (number)	100	10
Total Signage Costs – Private	0	0
Total Signage Costs – LA	£45,000	£4,500
Total signage costs by 2016	£45,000	£18,000

Note: Total signage costs for current designations (both options) are upper estimates and are based on all current bathing water designations requiring new signage to meet the 2016 information requirement (i.e. 100 designated bathing waters x £450 signage cost).

19. However, the overall cost to LAs providing the required water quality information instead could in fact be relatively lower than the cost to private controllers under the 'do nothing' option, owing to the fact that many LAs hold controller responsibilities already, are likely to have multiple sites and can benefit from potential economies of scale. It is therefore anticipated that the additional costs to LAs associated with option 2 will be minor, and indeed relatively smaller than the costs arising for private owners under the 'do nothing' option, leading to a benefit under option 2. This assumption is supported by the fact that many LAs have not claimed under offer of funding made available by the Welsh Government in 2011, suggesting that they are able to absorb the costs of the water quality information requirements fairly easily.

Benefits to Private Owners

20. Existing private owners of designated bathing waters are expected to benefit in monetary terms from the changes under option 2 since they will no longer have to incur future costs arising from the information requirements set out under the Directive. However, it is anticipated that a majority of existing private controllers would have accounted for the changes due in 2016 when producing their existing signage and perhaps would have made use of the funding available from the Welsh Government in 2011. Hence, avoided costs in 2016 for private owners of existing designated bathing waters are estimated to be minimal.

21. Private owners of new bathing waters designated between 2012 and 2015 will also benefit under Option 2 from the avoided cost of providing the required water quality information, since this responsibility will instead fall to LAs. However, a majority of new bathing water designations are currently controlled by LAs; private owners are not always aware of the designation process or find it overly burdensome. Since 10% of currently designated bathing waters are privately controlled³ it is assumed that, as a maximum, 10% of new designations between 2012 and 2015 will also be privately controlled (i.e. one out of the ten estimated new designations per annum). It is estimated that signage to display the required bathing water quality information costs around £450 per designated bathing water site, so the potential cost saving to private controllers of newly designated bathing waters is £450 per annum between 2012 and 2015.

³ In 2012, 10% of the existing designated bathing waters are privately controlled (10 out of the 100) and 90% are controlled by LAs.

22. Private controllers of designated bathing waters will also benefit from no longer having to make themselves aware of the water quality information obligations or having to seek specialist advice from Natural Resources Wales on the requirements. It is anticipated that time and cost savings will arise as a result, although it has not been possible to quantify these for the purpose of this RIA due to lack of available evidence at this stage.

Benefits to the Public

23. Potential public health benefits could also be realised by the public if bathing water quality information is displayed at newly designated bathing sites, since bathers will be more informed about where and when to bathe. Public health benefits that are additional to the baseline are only likely to arise where water quality information is not currently available, or would not have been available under the 'do nothing' option. Option 2 will therefore only generate a potential public health benefit if it leads to water quality information being displayed where it previously was not, or if better quality information is provided.
24. The public will also benefit from the consistency of signage across designated bathing water sites in Wales under Option 2, potentially making the water quality information more accessible and easier to understand. This in itself could also lead to a potential public health benefit if bathers are able to make better informed decisions about where and when to bathe.

Overall Assessment of Option 2

25. Additional costs relative to the baseline will arise for LAs under option 2 with the transfer of control of designated bathing waters. Since the cost of the water quality information requirements will simply be transferred from private controllers to LAs, it is anticipated that the overall cost impact of option 2 will be neutral. However, the transfer of cost to LAs under option 2 could in fact result in a net benefit since it is anticipated that LAs may be able to fulfil the water quality information requirements at a relatively lower cost than private controllers.
26. Additional benefits relative to the baseline are likely to arise to the public (bathers) from having more consistency of signage across Wales and from having water quality information displayed at newly designated bathing sites. Private owners will also benefit in monetary terms from no longer having to fulfil costly water quality information requirements.
27. Perhaps the most significant benefit arising under option 2 is the expected increase in compliance with the Bathing Water Directive as a result of bathing water controller responsibilities being transferred to LAs. Option 2 is likely to substantially reduce the level of non-compliance with the Directive and hence to reduce the risk of infraction. Hence, option 2 is the preferred option and it is recommended that bathing water controller responsibilities are transferred to LAs in order to meet the objectives of the policy.

Uncertainty in New Designations

28. The main uncertainty associated with the economic assessment of the proposed regulatory option is the number of new bathing water designations estimated to arise each year. The estimated number of new designations is based on the 40 actual applications received by the Welsh Government in the last two years (as of August 2012).
29. 19 of the 40 applications received demonstrated the designation requirements of the Directive. Hence it is assumed, for the purpose of analysis, that around 10 new designations are likely to arise in each year between 2012 and 2015. However, there is some uncertainty associated with this estimate, to the extent that the number of designations could in fact be higher (or lower) in any given year. Any increase from the estimated 10 new designations per annum, however, is likely to be marginal and is unlikely to have any substantial impact on the overall costs of option 2.

Specific Impact Assessments

Small Firms Impact Test

30. Under the 'do nothing' option, small businesses/private controllers have to fulfil the water quality information requirements as set out in the Bathing Water Directive. Option 2 will reduce this administrative and cost burden on small businesses since it will transfer bathing water controller responsibilities to LAs.
31. Option 2 will also reduce the risk of non-compliance with the Directive since many small firms are currently unaware of their responsibilities under the Bathing Water Regulations 2008.

Health and Wellbeing

32. Option 2 is anticipated to increase the level of compliance with the water quality information requirements set out in the Directive, to the extent that there could be public health benefits arising as a result of improved water quality information being displayed. Along with the improved consistency of signage across Wales, this will make it easier for the public to decide where and when to bathe.

Welsh Language

33. The assessment of the preferred option (option 2) in this Impact Assessment accounts for the estimated costs of producing bilingual water quality information signs. Since controller responsibilities will be transferred to LAs under option 2, it is not anticipated that there will be any additional Welsh language impacts arising under the preferred option.

Summary of Specific Impact Tests

Test	Impact
Statutory Equality Duties	None
Economic Impacts - competition	None
Economic Impacts – Small firms	Yes
Environmental Impacts - GHG	None
Environmental Impacts – Wider environmental issues	None
Social Impacts – Health and well-being	Yes
Social Impacts – Human rights	None
Social Impacts – Justice system	None
Social Impacts – Rural proofing	None
Sustainable development	None
Welsh Language	Minor

Consultation

34. The Welsh Government undertook a targeted consultation (15 August to 26 September 2012) on proposed changes to the Bathing Water Regulations 2008.
35. The consultation letter was sent to all local authorities, private organisations and individuals defined as a bathing water controller under the Bathing Water Regulations 2008, and to local authorities who would be brought into the definition by the proposed amendments.
36. The aim of the consultation was to seek views on transferring the responsibilities for providing information about water quality and potential sources of pollution at designated bathing waters from private bathing water owners to local authorities in Wales.
37. Five responses were received, of those responses four supported the proposal to move bathing water controllers' responsibility under the Directive at privately owned bathing waters to local authorities, with one response objecting to the proposal.
38. The majority of responses who supported transferring responsibility to local authorities (option 2) identified that this proposal would ensure consistency of practices across designated bathing waters and would assist private beach controllers. It was also stated that option 2 would ensure that appropriate signage and current and relevant information relating to water quality is being appropriately displayed.
39. The proposed change to the regulations would mean that local authorities would be responsible for ensuring that the required information is present and correct at all designated bathing waters in Wales. It does not mean that local authorities would be expected to take on any additional responsibilities at privately owned bathing waters, other than those specified in the Directive.

40. Local authorities will have no powers of enforcement as a consequence of these changes. Where non-compliance with the Directive is identified, power of enforcement will remain with the Welsh Ministers.

Post Implementation Review

41. Natural Resources Wales are responsible for monitoring and enforcement carried out under the Bathing Water Regulations 2013. They report to the Welsh Government annually. These regulations will be reviewed five years after they are laid.

Agenda Item 5

Y Gwir Anrh/Rt Hon Carwyn Jones AC/AM
Prif Weinidog Cymru/First Minister of Wales



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: LF/FM/0733/13

David Melding AM
Chair of the Constitutional and Legislative
Affairs Committee
National Assembly for Wales
Ty Hywel, Cardiff Bay
CF99 1NA

5th August 2013

Dear David

I am writing in response to your letter of 2 July 2013 concerning the scrutiny arrangements for orders that commence Acts of the Assembly.

It is important that there is flexibility in the process of deciding when Acts come into force, and as you acknowledge this is normally an administrative matter for the Government to decide alone.

In some circumstances commencing Acts can be technically complex, this is in particular where there is a need for transition from an existing system to another. It is for this reason that bills often enable commencement orders to make provision that is (for example) transitional or incidental. In such cases the provision that is transitional or incidental must relate to the act of commencement itself and should therefore be narrow in extent.

However in light of your concerns I have asked officials to review the content of commencement orders over the summer period and I will write to you again after the recess.

Yours sincerely

CARWYN JONES

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Constitutional and Legislative Affairs Committee

Rt Hon Carwyn Jones AM
First Minister
Welsh Government
5th Floor
Tŷ Hywel
Cardiff Bay



2 July 2013

Dear First Minister

Commencement Orders

It is a consistent theme of our scrutiny of delegated powers to make subordinate legislation that such legislation should be subject to an appropriate degree of scrutiny by the Assembly.

The Constitutional and Legislative Affairs Committee considered two Commencement Orders at its meeting on 24 June 2013, namely *The Housing and Regeneration Act 2008 (Commencement No.3 and Transitional, Transitory and Saving Provisions) (Wales) Order 2013* and *The Public Audit (Wales) Act 2013 (Commencement, Consequential Amendments, Transitional and Saving Provisions) (Wales) Order 2013*.

It is not our normal practice to consider commencement orders as they are not subject to any procedure.

However, recently as part of our scrutiny of commencement provisions in Bills, we have noticed that some Bills permit a commencement order to be used to include, for example, incidental, supplementary, consequential, transitory or transitional provisions. We consider that such provisions should not be contained within commencement orders, to ensure that they are subject to a proper level of scrutiny.

We have made a number of recommendations in our reports on the scrutiny of Bills to deal with this issue and will continue to do so.

Bae Caerdydd
Caerdydd
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It is for these reasons that we considered the 2 orders above, as they do more than simply commence provisions.

As a consequence of our consideration of these orders, the committee asked that I write to seek your views on the use of commencement orders to include non-commencement provisions.

I would be grateful if you could consider these points and let the Committee have your response in due course.

Yours sincerely

A handwritten signature in black ink, reading "David Melding". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

David Melding AM
Chair



Eich cyf/Your ref
Ein cyf/Our ref
David Melding AM
Chair
Constitutional and Legislative
Affairs Committee
National Assembly for Wales
Cardiff Bay

15 July 2013

Dear David

Legislative Consent Memorandum - Anti-Social Behaviour, Crime and Policing Bill: provisions relating to dogs

Many thanks for your letter of the 2nd July 2013 requesting further information following my written statement of the 2nd May on the suspension of the draft Control of Dogs (Wales) Bill and your subsequent discussions at Committee on the 10th and 24th June.

I have annotated my responses to your questions below:

(i) Whilst some of the policy objectives that the Welsh Government was seeking to achieve through its Bill could be achieved by the UK Bill, because both Bills have different focuses, it potentially may be difficult for local authorities to take early intervention action under the UK Bill to prevent a dog from becoming dangerous, which is a matter that the Welsh Bill had hoped to address.

Please could you clarify why you believe the approach in the UK Bill to be more appropriate?

As stated in my Written Statement on 2 May, the Welsh Government is committed to ensuring that out-of-control and dangerous dogs are dealt with effectively. We are committed to a statutory framework that will make it unlawful for dogs to be dangerously out-of-control on private premises. We are also committed to protection for assistance dogs, for example guide dogs and hearing dogs, as well as a statutory training and dog welfare regime.

I gave careful consideration to how these objectives could best be achieved so that our children, families and communities are better protected. I am also committed to the long term cultural change which cannot be achieved by legislation alone but will address the root causes of the problem by promoting responsible dog ownership.

Our discussions with enforcement authorities and third sector organisations in Wales indicated that enforcers would far prefer to act on an interventionist basis and prevent

both fatal incidents and/or compromising the welfare of a dog. In addition the amendments to the Dangerous Dogs Act 1991, which we had set out in our draft Bill, are now being taken forward in the draft Home Office Anti-social Behaviour, Crime and Policing Bill.

I reviewed the provisions of the draft Anti-Social Behaviour Bill published by the Home Office and, whilst I accept many of the criticisms made of this draft bill, I nevertheless believe that it may provide a useful vehicle to fulfil our ambitions. The Anti-social Behaviour, Crime and Policing Bill has now been introduced to Parliament, and I will continue to work in partnership with the UK Government on this issue to ensure we achieve a seamless approach to dog control across England and Wales (given that dogs and their owners travel across borders) and continue to emphasise the importance of:

- the dog welfare aspects of proper dog control;
- the responsibilities of dog ownership; and
- the value of producing guidance on these issues that can be utilised in both Wales and England.

We are working closely with the UK Government and are assured that the UK Bill is drafted in such a way that:

- early preventative steps can, and should, be used, possibly by the use of an Acceptable Behaviour Contract, which gets the individual to acknowledge their behaviour and its effect, with the overall aim of stopping it quickly.
- if the behaviour does not desist there is an escalation in the enforcement powers and the timing of that escalation is for the professionals involved to gauge (there is no time limit set to deter escalation if changes to behaviour do not occur)

By giving professionals a means of challenging all unacceptable behaviour *immediately* (including out of control dogs), rather than going through a formal court process, clear standards of acceptable behaviour can be outlined to reinforce the message that unacceptable behaviour will not be tolerated.

(ii) Please can you explain why the Welsh Bill could not fully achieve your policy objectives and what particular powers are not available to the National Assembly to enable this legislation to be made in Wales?

The National Assembly has the necessary legislative competence to proceed with the policy that we had outlined for our proposed Control of Dogs (Wales) Bill.

Whilst our Bill would have achieved the policy objectives, in terms of enforcement the UK Bill has the potential to provide wider and more effective powers to the police, local councils and social landlords who are responsible for dealing with irresponsible dog owners and issues of dog control.

I am confident we are shaping the content of the draft UK Bill as it now includes the amendments to the Dangerous Dogs Act that we were seeking.

We will continue to work with the UK Government to ensure the UK Bill and the supporting guidance, will meet our requirements but I retain the option of introducing a Welsh Bill.

(iii) You refer specifically to acquiring regulation-making powers in your statement of 2 May. What is the current position regarding the acquisition of these powers or are they no longer considered necessary?

As you may appreciate discussions are ongoing on all of this. In terms of implementing the Bill's provisions in relation to dog control, the critical factor is that we should develop and agree with the Home Office the guidance to local authorities and the police which will ensure that dog control related interventions take place as was envisaged in our draft Bill. We see no reason currently, why that aspiration cannot be achieved.

(iv) Do you envisage bringing forward any specific Welsh legislation in relation to the control of dogs in the near future?

I have only suspended the Control of Dogs Bill, not withdrawn the proposals. However, if the UK Bill does not reach muster I have the option of moving forward with it.

Our draft Bill was only part of the solution for considering out of control and dangerous dogs. Our Road Map on Dog Welfare has set out a number of options and actions that have already been taken. Banning the use of electronic collars on dogs, for example, removes potential adverse negative impacts on dogs.

I also intend bring forward robust and enforceable regulations for the micro-chipping of dogs in Wales and also to improve the welfare of dogs in licensed breeding establishments.

The Welsh Governments "Code of Practice for the Welfare of Dogs" makes it clear that owners of dogs have a responsibility to require that dogs:

- have suitable environment to live in;
- have a healthy diet;
- are able to behave normally;
- have appropriate company; and
- are protected from pain, suffering injury and disease.

Compliance with those requirements will help considerably in maintaining control of a dog.

I hope you find these responses helpful.



Alun Davies AC / AM

Y Gweinidog Cyfoeth Naturiol a Bwyd
Minister for Natural Resources and Food

Lesley Griffiths AC / AM
Y Gweinidog Llywodraeth Leol a Busnes y Llywodraeth
Minister for Local Government and Government Business



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: LF/LG/0803/13

David Melding AM
Chair, Constitutional & Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
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23 August 2013

Dear David

I have issued a technical consultation on the draft Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013. There will be a four week consultation period closing on 20 September 2013.

A link to this consultation and the draft regulations is attached for the Constitutional & Legislative Affairs Committee's information, to assist scrutiny of the finalised Regulations which I intend to lay in November 2013. My officials would be happy to provide a technical briefing on the draft Regulations and the proposed amendments.

I will ensure the Committee continue to be kept informed of progress in developing these Regulations, as well as sets of technical regulations necessary for the effective operation of the Council Tax Reduction Schemes which will also need to be amended for 2014-15.

Lesley Griffiths AC / AM
Y Gweinidog Llywodraeth Leol a Busnes y Llywodraeth
Minister for Local Government and Government Business

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