

Environmental Protection

The Scotland River Basin District (Quality of Shellfish Water Protected Areas) (Scotland) Directions 2015

March 2015

D I R E C T I O N S

ENVIRONMENTAL PROTECTION

The Scotland River Basin District (Quality of Shellfish Water Protected Areas) (Scotland) Directions 2015

Made - - - - - *20th March 2015*

Coming into force - - - - - *1st April 2015*

The Scottish Ministers give the following Directions to the Scottish Environment Protection Agency (“SEPA”) in exercise of the powers conferred by section 40(1) of the Environment Act 1995(a), section 2(6) of the Water Environment and Water Services (Scotland) Act 2003(b) and all other powers enabling them to do so.

In accordance with section 40(6) of the Environment Act 1995, they have consulted SEPA.

Citation, commencement, extent and application

1.—(1) These Directions may be cited as the Scotland River Basin District (Quality of Shellfish Water Protected Areas) (Scotland) Directions 2015 and come into force on 1st April 2015.

(2) These Directions extend to Scotland only.

(3) These Directions apply—

(a) only in relation to the exercise of SEPA’s functions under—

(i) section 9(1)(a)(ii) of the Act;

(ii) the relevant enactments in so far as they apply in relation to that section; and

(iii) the Water Environment (Shellfish Water Protected Areas: Environmental Objectives etc.) (Scotland) Regulations 2013(c); and

(b) only in relation to surface water within the Scotland River Basin District.

Interpretation

2.—(1) In these Directions—

“90-percentile standard” means a standard that is failed if the most probable number of *Escherichia coli* is greater than the standard for 10% or more of the assessment period;

“the Act” means the Water Environment and Water Services (Scotland) Act 2003(d), as amended from time to time;

“assessment period” means one or more calendar years (as determined by SEPA);

“*Escherichia coli* input zone” means an area of coastal water or transitional water identified under article 4(1);

(a) 1995 c. 25. The functions of the Secretary of State in or as regards Scotland were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(b) 2003 asp 3.

(c) S.S.I. 2013/325.

(d) 2003 asp 3, as relevantly amended by section 54 of the Aquaculture and Fisheries (Scotland) Act 2013 (asp 7).

“most probable number of *Escherichia coli*” means the most probable number of *Escherichia coli* enumerated using a two stage, five-tube, three dilution most probable number test which is consistent with the international standard analytical method ISO/TS 16649-3:2005(a);

“the relevant enactments” has the same meaning as it has in section 2(8) of the Act;

“Scotland River Basin District” means the area designated a river basin district for the purposes of Part 1 of the Act by virtue of the Water Environment and Water Services (Scotland) Act 2003 (Designation of Scotland River Basin District) Order 2003(b);

“shellfish water protected area” means the coastal water or transitional water within an area of coastal water or transitional water designated under section 5A(1) of the Act; and

“shellfish water quality” means the quality of a shellfish water protected area, assessed in accordance with the quality criteria to be applied for that purpose by article 3.

(2) Any word or expression used (but not defined) in these Directions which is defined in Part 1 of the Act has the same meaning as it has in Part 1 of the Act.

Assessment and classification of shellfish water quality: standards and criteria to be applied

3.—(1) For the purposes of assessing and classifying the quality of each shellfish water protected area, SEPA must apply the quality criteria in paragraph (2).

(2) The quality of a shellfish water protected area must be assessed and classified as—

- (a) “good” if it satisfies the standard for ‘Good’ in the table below;
- (b) “fair” if it otherwise satisfies the standard for ‘Fair’ in the table below; and
- (c) “insufficient” if it does not satisfy either of those standards.

Shellfish water quality standards	
<i>Most probable number of Escherichia coli per 100g sample of shellfish flesh and intra-valvular liquid as a 90-percentile standard</i>	
Good	Fair
≤ 230	≤ 4,600

(3) SEPA—

- (a) must discount the results of a sample if—
 - (i) it has carried out an investigation to establish whether the sample was likely to have been significantly affected by—
 - (aa) wild animal sources(c) of *Escherichia coli*; or
 - (bb) an exceptional event of short duration; and
 - (ii) in its view (based on the investigation), the sample was so affected; and
- (b) may discount the results of a sample collected from an *Escherichia coli* input zone.

(4) In paragraph (3)(a) “an exceptional event” means a one-off or otherwise unusual pollution event, other than an event caused by intermittent discharges under normal weather conditions(d).

(a) “Microbiology of food and animal feedings stuffs - Horizontal method for the enumeration of β-glucuronidase-positive *Escherichia coli* - Part 3: Most probable number technique using 5-bromo-4-chloro-3-indolyl-β-D-glucuronide”.

(b) S.S.I. 2003/610.

(c) These sources include mammals such as seals and deer, and birds (for example in sea-bird nesting colonies or rafts).

(d) An exceptional event may, for example, include a pollution event attributed to exceptional weather or caused by a burst sewer or a breakdown at a treatment works. It would not include pollution resulting from intermittent discharges from a combined sewer overflow which occur during normal weather conditions.

***Escherichia coli* input zones**

4.—(1) Subject to paragraph (2), SEPA may identify one or more areas of coastal water or transitional water (within a shellfish water protected area) which it considers are immediately adjacent to sources of inputs of *Escherichia coli* resulting from human activities.

(2) The combined surface area of each *Escherichia coli* input zone identified within a shellfish water protected area must not exceed 5% of the surface area of the shellfish water protected area.

Victoria Quay,
Edinburgh
20th March 2015

W GEORGE BURGESS
A member of the staff of the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Directions)

These Directions direct SEPA to assess and classify the quality of each shellfish water protected area as either good, fair or insufficient (by reference to specified criteria and standards). They apply only in relation to shellfish water protected areas within the Scotland River Basin District.

Article 3 set outs the quality criteria and standards for assessing and classifying the quality of each shellfish water protected area. SEPA must assess the quality of each area as either good, fair or insufficient (based on samples taken during the preceding one or more calendar years). SEPA must discount the results of a sample if, in its view, the sample was significantly affected by wild animal sources of *Escherichia coli* or by a one-off or unusual pollution event of short duration.

Article 4 directs that SEPA may identify zones within a shellfish water protected area which it considers are immediately adjacent to sources of inputs of *Escherichia coli* resulting from human activities. For the purposes of assessing and classifying the quality of a shellfish water protected area, SEPA may also discount the results of a sample collected from any such zone.



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