

EIR 202400405478 - ANNEX A - ATTACHED DOCUMENTS

Attachment 1: Document - S6W-17690- Background note

S6W-17690- Background note

1. There have been no recent MiCases, PQs regarding bathing water designation process.
2. The core aim of the Bathing Waters (Scotland) Regulations 2008 is to protect public health. If a large number of bathers are expected to use a bathing water and there is appropriate infrastructure or facilities provided, there is a legal requirement for Scottish Ministers to designate the bathing water and for the carrying out of any necessary improvement measures to protect water quality, such as increased wastewater treatment.
3. Following a consultation process some years ago, Scottish Government developed a policy regarding the designation of bathing waters. That policy states that 150 people per day, or thereabouts, using the water for bathing regularly throughout the season would be considered to be a large number of bathers. In determining whether a large number of bathers are expected to bathe there, Ministers must also have regard to past trends, infrastructure and facilities and promotion of bathing at any proposed bathing water.
4. The Ferret Reported on the 5 April that the Environmental Rights Centre Scotland (ERCS) had made representations to Environmental Standards Scotland (ESS) regarding the lawfulness of the Bathing Waters designation process in Scotland. ERCS had previously written to the former Minister for the Environment and Land Reform in the autumn of 2022 expressing its concerns in support of the River Almond Action Group and the unsuccessful River Almond bathing water proposal, which we responded to at the time.
5. In response to the concerns raised by ERCS we have made minor changes to the bathing waters designation proposal form and SEPA has updated the information on its website. In particular, reference to the 150 bathers limit has been removed from the application form and a table has been added requiring 10 user survey days are completed between 1 June and 15 September clarifying information requirements. [redact – section 10(4)(e) – other internal comms]
6. ESS has been in communications with ERCS to notify them that a new application form had been published on SEPA’s website. Following this ERSC published the following quote on its website:

“The good news is that we have already secured a partial win. Following an investigation by ESS to assess if the excessively high threshold of 150 bathers per day was lawful, the Scottish Government has confirmed that this threshold has been dropped”. Bathing water case update: the good, the bad, and the ugly (ercs.scot)
7. [redact – section 10(4)(e) – other internal comms]

Attachment 2: Email Chain - Subject: RE: PQs 19433 & 19434 re Bathing Waters

From: [redacted reg 11(2)]
Sent: Tuesday, July 4, 2023 4:26 PM
To: Deputy Director Environmental Quality and Resilience <DDEQR@gov.scot>; [redacted reg 11(2)]@gov.scot
Cc: [redacted reg 11(2)]@gov.scot>; [redacted reg 11(2)]@gov.scot>; [redacted reg 11(2)] [redacted reg 11(2)]@gov.scot
Subject: PQs 19433 & 19434 re Bathing Waters

Hi [redact – section 11(2)] and Emma

Please can you review and approve the draft PQ responses, including background notes, attached for the following:

S6W-19433 Mark Ruskell: To ask the Scottish Government what assessment it has made of the water quality in freshwater lochs and waterways ahead of the summer bathing water season.

S6W-19434 Mark Ruskell: To ask the Scottish Government whether it will review the current bathing water designation process, in light of the concerns raised by the Environmental Rights Centre for Scotland that the current policy to only allow bathing water status at sites that have had 150 daily visitors is disproportionately high and prevents sites from gaining the status.

[redact – section 10(4)(e) – legal advice].

The PO deadline is Friday 7 July.

Thanks

[redacted reg 11(2)]

[redacted reg 11(2)]

PQ S6W-19433 Mark Ruskell MSP pre season Bathing Water assessments July 2023
<https://erdm.scotland.gov.uk/documents/A44320029/details>

PQ S6W-19434 Mark Ruskell MSP review of Bathing Water designation process July 2023
<https://erdm.scotland.gov.uk/documents/A44320820/details>

Attachment 2.1: Attachment - Subject: RE: PQs 19433 & 19434 re Bathing Waters

[redacted 10(4)(e) – Legal advice]

Attachment 2.2: Attachment - Subject: RE: PQs 19433 & 19434 re Bathing Waters

SCOTTISH PARLIAMENT

WRITTEN ANSWER

21 July 2023

Index Heading: Economy

Mark Ruskell (Mid Scotland and Fife (Region)) (Scottish Green Party): To ask the Scottish Government whether it will review the current bathing water designation process, in light of the concerns raised by the Environmental Rights Centre for Scotland that the current policy to only allow bathing water status at sites that have had 150 daily visitors is disproportionately high and prevents sites from gaining the status.

S6W-19434

Mairi McAllan:

Under the Bathing Water (Scotland) Regulations 2008, Scottish Ministers designate bathing waters where they expect a large number of people to bathe, having regard to past trends and infrastructure and facilities provided, or other measures taken to promote bathing. Across Europe the meaning of a large number of bathers ranges up 300 bathers per day, which is much higher than Scotland's 150 bathers.

Following extensive bather surveys across Scotland and a public consultation, the Scottish Government developed a policy regarding the designation of bathing waters. That policy states that 150 people per day, or thereabouts, using the water for bathing regularly throughout the season would be considered to be a large number of bathers.

In determining whether a large number of bathers are expected to bathe there, Scottish Ministers must also have regard to past trends, infrastructure and facilities and promotion of bathing at any proposed bathing water.

Contact Name: [redacted reg 11(2)]

Ext: [redacted reg 11(2)]

BACKGROUND NOTE FOR S6W-19434

1. There have been no recent MiCases on the bathing waters designation process other than Environmental Right's Centre Scotland's letter to the Cabinet Secretary in September 2022.
2. There has been one recent PQ (S6W-17874) from Mercedes Villalba MSP asking the Scottish Government what its response is to concerns by the Environmental Rights Centre for Scotland regarding barriers to gaining bathing water status at Scotland's rivers, lochs and beaches due to newly introduced requirements.
3. Mark Ruskell MSP was quoted in the media at the end of 2022 suggesting that Loch Leven should be designated as a bathing water in order to help resolve nutrient pollution and corresponding hazardous to cyanobacteria (blue/ green algae) blooms the loch had been experiencing more frequently.
4. The core aim of the Bathing Waters (Scotland) Regulations 2008 is to protect public health. If a large number of bathers are expected to use a bathing water and there is appropriate infrastructure or facilities provided, there is a legal requirement for Scottish Ministers to designate the bathing water and for the carrying out of any necessary improvement measures to protect water quality, such as increased wastewater treatment.
5. Extensive aerial surveys were carried out at locations across Scotland, involving over 8,000 aerial photographs, supported by further on the ground field surveys in 2003 to help develop a definition of a 'large number of bathers'.
6. Following a public consultation process in 2004, Scottish Government developed a policy regarding the designation of bathing waters. That policy states that 150 people per day, or thereabouts, using the water for bathing regularly throughout the season would be considered to be a large number of bathers. In determining whether a large number of bathers are expected to bathe there, Ministers must also have regard to past trends, infrastructure and facilities and promotion of bathing at any proposed bathing water.
7. The policy of Scottish Ministers about what constitutes a 'large number', above, has not changed and information to support these considerations is collected as part of an administrative process, which allows anyone to propose a new surface water area for consideration for bathing water designation. In order for a bathing water to be designated, we would be expecting to see user numbers of around 150 bathers, but this is only a guide and in particular cases there might be other relevant factors to take into account that might mean that the bathing water would be designated where user numbers were lower than 150.
8. Defra has just updated England's bathing water designation process on 3 July to more closely mirror Scotland's (**Designate a bathing water: guidance on how to apply - GOV.UK (www.gov.uk)**). In particular Defra has defined a large number of bathers as an average of 100 bathers per day over 2 survey days. This is a change from previously requiring 20 survey days and not defining a large number of bathers.
9. The European Commission's 'Support to the assessment of Member States' compliance with the Bathing Water Directive 2006/7/EC (BWD): Final Overview Report', March 2019, indicates member states have defined a large number of bathers from 10 to 300 bathers per day. The report indicated that the Commission had no concerns with the designation of

bathing waters in the UK, but that there was room for improvement for Austria, Belgium, Croatia, Denmark, Estonia, Greece, France, Latvia, Lithuania, Luxembourg, Poland, Romania, Slovenia, Sweden and Spain.

10. The Ferret Reported on the 5 April that the Environmental Rights Centre Scotland (ERCS) had made representations to Environmental Standards Scotland (ESS) regarding the lawfulness of the Bathing Waters designation process in Scotland. Mark Ruskell was quoting as saying bathing water designations had been “a long running issue, not just for smaller beaches and rivers, but also for larger spots like Loch Leven. In these cases existing pollution can mean that bathers avoid the waters, meaning the 150 threshold is never reached,” he claimed. “It cannot be right that we stand by and do nothing based on a technicality”.
11. ERCS had previously written to the former Minister for the Environment and Land Reform in the autumn of 2022 expressing its concerns in support of the River Almond Action Group and the unsuccessful River Almond bathing water proposal, which we responded to at the time.
12. Following the Environmental Rights Centre for Scotland’s letter last autumn stating that aspects of the bathing waters application form were contradictory/ confusing we made minor changes to the form. Previously the form collected evidence of the level of use of the location on at least three separate dates, which were to be in three different months, during the bathing season. This information requirement has been changed so that information is to be provided for a minimum of 10 survey days at peak user times during the bathing water season; but these can be any 10 days apart from if a one off organised event is being held. The form also continues to collect information on past trends, infrastructure and facilities provided for bathers and promotion of bathing to help support Scottish Ministers’ decisions.
13. The reference to the policy regarding 150 bathers was also removed from the bathing waters application form and the guidance in order to provide greater simplicity. Unfortunately this led ERCS to conclude that we were no longer using this figure as a guide which is not true.([Bathing water case update: the good, the bad, and the ugly \(ercs.scot\)](#)).
14. [redacted 10(4)(e) – other internal comms]
15. We have just received feedback from Environmental Standards Scotland (ESS) in writing on the issues raised by the Environmental Rights Centre Scotland regarding the policy around 150 bathers, 3 survey days in 3 consecutive months and not allowing organised one off events to count for user numbers.
16. ESS has confirmed that it is content with the policy regarding 150 bathers being regarded as a large number of bathers. However, it requests improvements in limiting the allowable evidence of user surveys to drone/ aerial imagery; exclusion of one off events for user surveys, and clarity re 150 bathers in the application form/ guidance. ESS also advises that the Scottish Government should create and make public a clear procedure setting out how bathing waters applications will be assessed, including practical measures on how to apply discretion with regards to the 150 bather threshold.
17. [redacted 10(4)(e) – other internal comms]

Contact Name: [redacted reg 11(2)]

SCOTTISH PARLIAMENT

WRITTEN ANSWER

16 January 2024

Index Heading: Economy

Monica Lennon (Central Scotland (Region)) (Scottish Labour): To ask the Scottish Government when it will action the recommendations made by Environmental Standards Scotland in relation to applications for new designated bathing waters in Scotland.

S6W-23972

Mairi McAllan: Scotland now has the highest number of designated Bathing Water sites ever, with the vast majority classified as good or excellent and 98% overall achieving the bathing water quality standards.

Environmental Standards Scotland (ESS) published its Designation of Bathing Water Sites in Scotland Summary Report on 4 December. This the summary report and will be followed by the publication of a full report providing additional details on the background, information reviewed, ESS assessments, and the outcomes achieved.

ESS concluded in the report that that the Scottish Government's approach to interpreting a large number of bathers in designating new bathing water sites had not affected Scotland's performance, in comparison with other parts of the UK. They also made a small number of recommendations on minor improvements to the application form and guidance. Action to address these recommendations is underway.

Contact Name: [redacted reg 11(2)]

Ext: [redacted reg 11(2)]

BACKGROUND NOTE FOR S6W-23972

18. There have been no recent MiCases or PQs on the bathing waters designation process. There is current a live EIR by the Environmental Right Centre for Scotland (ERCS) regarding this matter and received after Environmental Standards Scotland (ESS) published its report. ERCS initially made the representation, which ESS has investigated following a letter ERCS made to you in autumn 2022 raising its concerns about the bathing waters designation process in Scotland.
19. **5 Dec** The Times (Scotland) reported that 'The environment watchdog [Environmental Standards Scotland] has criticised SNP ministers for a lack of transparency over a process [designating bathing waters] that allows swimmers to be protected from sewage leaks'.
20. The core aim of the Bathing Waters (Scotland) Regulations 2008 is to protect public health. If a large number of bathers are expected to use a bathing water and there is appropriate infrastructure or facilities provided, there is a legal requirement for Scottish Ministers to designate the bathing water and for the carrying out of any necessary improvement measures to protect water quality, such as increased wastewater treatment.
21. [redacted 10(4)(e) – other internal comms]
22. [redacted 10(4)(e) – other internal comms]
23. [redact – section 10(4)(e) – legal advice].

Contact Name: [redacted reg 11(2)]

Ext: [redacted reg 11(2)]

Attachment 4: Email - For info: Media query (Times) - Environmental Standards Scotland report on bathing water categorisation

From: [redacted reg 11(2)]@gov.scot.

Sent: Monday, December 4, 2023 5:33 PM

To: Cabinet Secretary for Transport, Net Zero & Just Transition <CabSecTNZJT@gov.scot>

Cc: [redacted reg 11(2)] [redacted reg 11(2)]@gov.scot. ; [redacted reg 11(2)]@gov.scot>; [redacted reg 11(2)] [redacted reg 11(2)]@gov.scot; [redacted reg 11(2)]@gov.scot>; [redacted reg 11(2)]@gov.scot. [redacted reg 11(2)]@gov.scot. Jon Rathjen <Jon.Rathjen@gov.scot>; Communications Net Zero & Rural Affairs <CommunicationsNetZeroandRuralAffairs@gov.scot>; [redacted reg 11(2)]@gov.scot>; [redacted reg 11(2)]@gov.scot>; Leanne Dobson <Leanne.Dobson@gov.scot>; Jack Middleton <Jack.Middleton@gov.scot>

Subject: For info: Media query (Times) - Environmental Standards Scotland report on bathing water categorisation

PO

For info – received a media query from the Times requesting a comment in response to summary report from Environmental Standards Scotland calling for greater transparency around the process for designating bathing waters – particularly the criteria for 150 people using them, which is ‘unnecessarily high’ compared to other UK nations. ESS have asked us to review the application and designation procedure

Have issued the following response on SpAd clearance – grateful if you could make Cab Sec aware on return

Thanks

[redacted reg 11(2)]

Scottish Government spokesperson said:

“Scotland now has the highest number of designated Bathing Water sites ever, with the vast majority classified as good or excellent. This demonstrates the benefits of our continued investment in protecting and improving bathing waters across the country.

“The Scottish Government is working with Environmental Standards Scotland to consider the points raised by their recent summary report.

“SEPA specialist teams sample water quality at designated bathing waters throughout the bathing water season and classifications are based on data from the four previous years. The latest classification shows that 98% of Scotland’s bathing waters continue to meet or exceed strict environmental standards.”

Query

Watchdog criticises ministers for lack of transparency on sewage-free bathing sites

Based on this report from ESS

<https://environmentalstandards.scot/wp-content/uploads/2023/12/Case-Summary-Report-Bathing-Waters-IESS.23.005.pdf>

- Does the government recognise the process was not previously transparent?
- Does it make the frequently cited 98% bathing water quality statistic less reliable as a measure of the impact of sewage pollution in Scottish waters?

Attachment 5: Email – Subject: Bathing Waters designation updates

From: [redacted reg 11(2)]

Sent: Tuesday, October 31, 2023 9:02 AM

To: Critchlow-Watton, Nathan <n.critchlowwatton@sepa.org.uk>

Cc: [redacted reg 11(2)]@gov.scot>; [redacted reg 11(2)]@SEPA.org.uk

Subject: Bathing Waters designation updates

Hi Nathan

Please find attached updates to the Bathing Water application form and SEPA's bathing waters designation webpage primarily around designation criteria, [redacted under 10(5) (d) – Confidentiality of Proceedings]

[redacted under 10(5) (d) – Confidentiality of Proceedings]

Please let me know if you are content with the updates and give me an indication of when the updates can be implemented by SEPA [redacted under 10(5) (d) – Confidentiality of Proceedings]

If you wish to discuss any aspect of these proposed changes please phone me or we can arrange a meeting on Teams.

Thanks

[redacted reg 11(2)]

Attachment 5.1: Attachment – Subject: Bathing Waters designation updates

Application form in relation to the designation of a bathing water under the Bathing Waters (Scotland) Regulations 2008

Please provide your application by email to bathingwaters@sepa.org.uk by 30 September for consideration for designation the following year.

Checklist

Item	Yes/No
User Survey	
Letter of Support from the Local Authority/Authorities	
Letter of support from landowner(s) (if applicable)	
Evidence of Local Consultation	
Information about beach management, infrastructure/facilities provided, promotion of bathing and past trends at the site.	

Section 1 Applicant details

Contact Name	
Organisation	

Section 2 Location of proposed bathing water (see Note 1)

Name of proposed bathing water	
Address	
Local Authority Area	
National Grid reference	

Section 3 Ownership of the proposed bathing water

Are you the Owner ?	Y/N
Are you the Leaseholder?	Y/N

Section 4 Support for the application (Note 2)

Is the application supported by the local authority?	Y/N
Is the application supported by the owner or leaseholder?	Y/N

Section 5 User Survey for Beaches or River Channels (see Note 3)

Please provide evidence of numbers of bathers and water users. Include people both swimming and paddling as bathers. If the application is for a stretch of river, please provide evidence of numbers of bathers in the river channel area. The river channel includes any gravel or sand banks in the channel

but does not include people on the banks. See note 3 below for the types of information which should be submitted with your application to provide evidence of the details you enter in the table below.

Name and organisation of people who undertook survey						
Survey	Date	Start and end time	Bathers (paddling or swimming)	Other water users	Beach users (not required for rivers)	Weather
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						

Please include, where relevant, details of any organised events.

Date	Annual Event/ festival name

Section 6 Facilities at the bathing area (see Note 4)

Facilities present at the site that support and promote bathing	Assessment	Detail
Public toilets	Y/N	
Changing facilities	Y/N	
Parking provision	Y/N	

Regular public transport links to the beach	Y/N	
Lifeguards	Y/N	
First aid service	Y/N	
Cafes/shops/kiosks	Y/N	
Regular beach cleaning	Y/N	
Markers indicating bathing areas	Y/N	
Bathing promotional material (leaflets/signs/website)	Y/N	
Beach or seaside award	Y/N	
Other (not listed above)		

Section 7 Evidence of local consultation (see Note 5)

How have local views been taken into account in relation to the proposed designation?

Section 8

Detail any evidence of past trends on use of the site for bathing

Notes

Note 1

Include a map showing the extent of the proposed bathing water, marking facilities specifically appropriate for bathers. The proposed bathing water should be the area used by a large number of bathers.

Note 2

Include any written support from local authorities and the site's owner, if you are not the site owner. Written support from the local authority should be at an appropriate level of seniority, for example the CEO and it should state that they accept the responsibilities as detailed below:

1. are required to display publicly-accessible signage at bathing waters showing information from SEPA onⁱ;
 - a. the water quality classification
 - b. a general description of the bathing water, and
 - c. information indicating if the bathing water is likely to be subject to short term pollution.
2. are responsible for keeping amenity beaches - those areas of beach adjoining an identified bathing water - free from litter under the Environmental Protection Act 1990ⁱⁱ
3. when required by SEPA perform beach management duties as outlined in the Bathing Waters Regulations such as;
 - a. posting temporary signage in the case of a pollution event or blue-green algae presence
 - b. removing materials on beach which are risks to health
4. must consider the provision of appropriate infrastructure (such as public transport provision, parking and toilets).

ⁱ The Bathing Waters (Scotland) Regulations 2008, Regulation 8 Public Information. The local authority must ensure that information about a bathing water, as specified in the Regulations and provided by SEPA, is available during the bathing season on a publicly accessible sign, for which the local authority is responsible for erection, maintenance, and update.

ⁱⁱ The Bathing Waters (Scotland) Regulations 2008, Regulation 16 Management measures at bathing waters affected by other pollution. When pollution takes the form of tarry residues, glass, plastic, rubber or any waste, the local authority must take such action as is necessary in order to remedy or mitigate the effect of the pollution within 7 days of becoming aware of it.

Note 3

Under the Bathing Water (Scotland) Regulations 2008, Scottish Ministers designate bathing waters where they expect a large number of people to bathe, having regard to past trends and infrastructure and facilities provided, or other measures taken to promote bathing. Generally around 150 people per day using the water for bathing regularly throughout the season would likely be considered a 'large' number of bathers;; however Scottish Ministers have discretion as to what would be a large number and could in some circumstances designate a bathing water where fewer than 150 bathers are expected per day.

You need to provide spot surveys of users which have been carried out:

- a) for a minimum of 10 days.
- b) at regular intervals throughout the typical bathing season (1st June to 15th September)
- c) at peak use times (such as weekends, bank holidays and school holidays).
- d) At the time of day when the highest numbers of users would be expected (e.g. warmest part of the day, 11am-3pm).

Regular annual events and beach festivals can be included in the spot surveys and you should indicate on which survey day the event occurred and give the name of the event. However, you should not undertake spot surveys on days where one off organised events, such as beach festivals are planned.

User counts should be well-evidenced by photography and/or drone footage, showing the whole area where most people bathe and demonstrating large numbers of bathers. One or two photos, labelled with date and location, should be submitted per day of the survey taken at the busiest time of day. Photography and drone footage should be taken far enough away so that people cannot be identified.

In relation to rivers, riverbank users are not required to be recorded, only those in the water.

In relation to beaches, reasonable judgement should be made about those who count as a bather. A person thought to have the intent to swim/ paddle and moving towards or away from the water should be counted as a bather. Those who are unlikely to access the water to bathe (i.e. dog walkers or those picnicking) should not be counted. Other users in the water should include those kayaking, boating, etc. Each bather should be counted only once, therefore anyone re-entering the water should not be counted again.

Note 4

Details entered in the table should include a general description of the facility (e.g. location, frequency of services, operating hours etc).

If there is beach cleaning and life guarding, please indicate who provides these services.

If there is car parking, please indicate the number of spaces and whether they are paid or free of charge.

Note 5

Please submit details of the local consultation that has been undertaken including;

- a) how the consultation was conducted,
- b) who has been consulted,
- c) how many responses were received,
- d) the range of responses,
- e) how you ensured a cross-section of opinions were captured.

All written responses/comments to the consultation should be collated into one document. A copy of the consultation document and a copy of the document with the consultation response should be provided with your application form.

Interested groups for the purpose of a consultation might be:

- Bathers
- Relevant local authority
- Land owner(s) (if relevant)
- Other water users
- Owners and operators of nearby waterside businesses e.g. cafes/shops
- Community council
- Local tourist offices
- Local residents
- Local environmental groups
- Experts in safety for outdoor swimming

Bathing waters designation

How is a bathing water identified?

The Bathing Water (Scotland) Regulations 2008 require Scottish Ministers to designate an area of surface water (coastal or inland) as a bathing water if they “expect a large number of people to bathe there, having regard to past trends and infrastructure or facilities provided, or other measures taken, to promote bathing” at that site. Ministers must also determine the period during which a large number of bathers are expected as the “bathing season”. In Scotland, the bathing season is typically determined as running from 1 June - 15 September.

Why designate bathing waters?

Bathing Waters designation aims to protect human health at locations where large numbers of people bathe during the bathing season. Water quality at designated bathing water sites in Scotland is monitored by SEPA during the bathing season. At a number of sites daily water quality forecasts are issued. Annually each site is classified as excellent, good, sufficient or poor based on measurements usually taken over a four-year period. This information allows people to make informed choices about where and when to bathe.

Criteria for designating a bathing water in Scotland

Scottish Ministers decide each year on the list of bathing waters to be designated, including new bathing waters, prior to each bathing season. The criteria for designation are that (i) a large number of people is expected to bathe there and (ii) no permanent advice against bathing there has been introduced.

Generally around 150 people per day using the water for bathing regularly throughout the season would likely be considered a ‘large’ number of bathers; however Scottish Ministers have discretion as to what would be a large number and could in some circumstances designate a bathing water where fewer than 150 bathers are expected. per day.

In determining whether a large number of bathers is expected to bathe at an area of surface water, Ministers will take a number of factors into account, including, past trends, infrastructure provided to support bathing, the promotion of bathing and beach management as well as other facilities and local/public views.

Apply for designation

Local authorities usually apply for designation of bathing waters, but any organisation or individual can suggest to Scottish Ministers that a bathing water should be designated. All applications should have the full support of the local authority and applications for privately owned sites must be supported by the landowners. Support includes carrying out relevant functions such as beach management, installing and maintaining signage, and regular cleaning.

If you are considering applying you should inform the bathing water team at an early stage.

Evidence needed for designation

Your application should include:

- user surveys
- information about beach management, infrastructure/facilities provided, promotion of bathing and any past usage trends at the site
- letter of support from LA
- letter of support from landowner(s) (if applicable)
- evidence of a local consultation

[Download an application form here](#)

Once the application and supporting evidence has been received SEPA will convene a Bathing Water Panel to consider whether the criteria for designation are met.

Scottish Ministers have to ensure that the public, the appropriate local authorities, the relevant health board, SEPA, and any other public body with an interest in any proposed bathing water are consulted. The Bathing Waters Panel convened by SEPA consists of representatives of these relevant groups and therefore this allows the consultation about any application for designation of a bathing water to take place. The Panel will consider any applications as well as review or revision of the list of bathing waters and the length of the bathing season relative to a designated bathing water. The Panel then provides a report to Scottish Ministers.

Timeline

Step 1 - To be considered by the Bathing Water Panel the application form and supporting material must be returned by 30 September. If the application is not fully complete, it will be returned.

Step 2 - If the application is complete, SEPA will convene a Bathing Water Panel meeting for the last week in October. The Panel will review all supporting evidence, including submissions from other responsible authorities.

Step 3 - The Bathing Water Panel, having considered all the information provided, will provide a report to Scottish Ministers (by 15 November) who will decide whether to designate the location as a bathing water.

Step 4 - The applicant will be informed, by Ministers, of the decision early in the following year as to whether or not a location is to be designated, including reasons for that decision.

There is no right of appeal against any decision by Scottish Ministers in relation to any decision regarding designation of bathing waters in any year. However, bathing waters are reviewed on an annual basis so proposed surface water locations can be considered again in future.

Attachment 6: PQ Answer and Background Note

SCOTTISH PARLIAMENT

WRITTEN ANSWER

30 October 2023

Index Heading: Economy

Alex Cole-Hamilton (Edinburgh Western) (Scottish Liberal Democrats): To ask the Scottish Government whether it will make it easier for beaches to qualify for bathing water status.

S6W-21937

Mairi McAllan:

The Bathing Water Directive is implemented in Scotland by the Bathing Waters (Scotland) Regulations 2008. Under these Regulations Scottish Ministers designate bathing waters where they expect a large number of people to bathe, having regard to past trends and infrastructure and facilities provided, or other measures taken to promote bathing. We have set this figure at around 150 bathers. Across Europe the meaning of a large number of bathers ranges up to 300 bathers per day.

We have taken a proportionate approach to designating bathing waters and there are no plans to change it. 2023 not only sees the highest number of bathing waters ever in Scotland, but the highest number rated excellent for water quality – and a total of 98% of locations achieving a classification of sufficient or better.

Contact: [redacted reg 11(2)]

Mob: [redacted reg 11(2)]

BACKGROUND NOTE FOR S6W-21937

1. There have been no recent MiCases on the bathing waters designation process other than Environmental Right's Centre Scotland's letter to the Cabinet Secretary in September 2022.
2. There has been one recent PQ (S6W-17874) from Mercedes Villalba MSP asking the Scottish Government what its response is to concerns by the Environmental Rights Centre for Scotland regarding barriers to gaining bathing water status at Scotland's rivers, lochs and beaches due to newly introduced requirements.
3. There are currently 13 live PQs from Alex Cole-Hamilton MSP as follows:

S6W-21931 Alex Cole-Hamilton: To ask the Scottish Government when it last met Scottish Water to discuss combined sewage overflows.

S6W-21932 Alex Cole-Hamilton: To ask the Scottish Government what work it has carried out to ensure that, where sewage is discharged into areas where there are environmental protections in place, there is no impact on the biodiversity of these areas.

S6W-21933 Alex Cole-Hamilton: To ask the Scottish Government whether monitoring of the whole sewage network will be a commitment in the next River Basin Management Plan.

S6W-21934 Alex Cole-Hamilton: To ask the Scottish Government how many times Scottish Water has been fined by SEPA for sewage spills in each of the last five years.

S6W-21935 Alex Cole-Hamilton: To ask the Scottish Government whether it will request that Scottish Water introduces sewage monitoring in the nine local authority areas that do not have any at present.

S6W-21936 Alex Cole-Hamilton: To ask the Scottish Government what length of sewage piping has been laid or replaced by Scottish Water in each of the last 10 years.

S6W-21937 Alex Cole-Hamilton: To ask the Scottish Government whether it will make it easier for beaches to qualify for bathing water status.

S6W-21938 Alex Cole-Hamilton: To ask the Scottish Government whether it will introduce sewage monitoring on the (a) River Almond and (b) Water of Leith.

S6W-21939 Alex Cole-Hamilton: To ask the Scottish Government how many complaints Scottish Water has received regarding sewage discharges in the last five years, and which locations generated the most complaints.

S6W-21940 Alex Cole-Hamilton: To ask the Scottish Government for what reason there were reportedly no sewage monitors installed in the 12 months following the announcement that there would be new monitors.

S6W-21941 Alex Cole-Hamilton: To ask the Scottish Government whether Scottish Water has an estimate of the true volume of sewage that has been discharged into Scotland's waterways in each of the last five years.

S6W-21942 Alex Cole-Hamilton: To ask the Scottish Government what happens to any money levied in fines for Scottish Water that it receives from SEPA.

S6W-21943 Alex Cole-Hamilton: To ask the Scottish Government whether it has met (a) the Marine Conservation Society, (b) Keep Britain Tidy, (c) Friends of the Earth and (d) Surfers Against Sewage in the last two years.

4. [redact – section 10(4)(e) – other internal comms]

5. The core aim of the Bathing Waters (Scotland) Regulations 2008 is to protect public health. If a large number of bathers are expected to use a bathing water and there is appropriate infrastructure or facilities provided, there is a legal requirement for Scottish Ministers to designate the bathing water and for the carrying out of any necessary improvement measures to protect water quality, such as increased wastewater treatment.

6. Following a public consultation process in 2004, Scottish Government developed a policy regarding the designation of bathing waters. That policy states that 150 people per day, or thereabouts, using the water for bathing regularly throughout the season would be considered to be a large number of bathers. In determining whether a large number of bathers are expected to bathe there, Ministers must also have regard to past trends, infrastructure and facilities and promotion of bathing at any proposed bathing water.

7. The policy of Scottish Ministers about what constitutes a 'large number', above, has not changed and information to support these considerations is collected as part of an administrative process, which allows anyone to propose a new surface water area for consideration for bathing water designation. In order for a bathing water to be designated, we would be expecting to see user numbers of around 150 bathers, but this is only a guide and in particular cases there might be other

relevant factors to take into account that might mean that the bathing water would be designated where user numbers were lower than 150.

8. Defra has just updated England's bathing water designation process on 3 July to more closely mirror Scotland's (Designate a bathing water: guidance on how to apply - GOV.UK (www.gov.uk)). In particular Defra has defined a large number of bathers as an average of 100 bathers per day over 2 survey days. This is a change from previously requiring 20 survey days and not defining a large number of bathers.

Contact Name: [redacted reg 11(2)]

Ext: [redacted reg 11(2)]

Attachment 7 – Extract of Ministerial Submission

1. In response to the concerns raised by ER CS we have made minor changes to the bathing waters designation proposal form and SEPA has updated the information on its website. In particular, reference to the 150 bathers limit has been removed from the application form and a table has been added requiring 10 user survey days are completed between 1 June and 15 September clarifying information requirements. [redacted – under 10(4)(e) – other internal comms]

ANNEX A

BATHING WATER DESIGNATIONS AND SEASON DATES FOR 2023

Background

1. The core aim of the Bathing Waters (Scotland) Regulations 2008 is to protect public health. If a large number of bathers are expected to use a bathing water and there is appropriate infrastructure or facilities provided, there is a legal requirement for Scottish Ministers to designate the bathing water and for the carrying out of any necessary improvement measures to protect water quality, such as increased wastewater treatment. Following a consultation process some years ago, Scottish Government developed a policy regarding the designation of bathing waters. That policy states that 150 people per day, or thereabouts, using the water for bathing regularly throughout the season would be considered to be a large number of bathers. In determining whether a large number of bathers are expected to bathe there, Ministers must also have regard to past trends, infrastructure and facilities and promotion of bathing at any proposed bathing water.

Attachment 8 – Email Chain: Subject: RE: For Cab Sec views - Media Query - Bathing water regulations

From: [redacted reg 11(2)]@gov.scot

Sent: Friday, March 31, 2023 6:39 PM

To: Cabinet Secretary for Net Zero & Just Transition <CabSecNZJT@gov.scot>; [redacted reg 11(2)]@gov.scot >; Cabinet Secretary for Net Zero, Energy and Transport <CabSecNetZET@gov.scot>

Cc: Communications Net Zero & Rural Affairs <CommunicationsNetZeroandRuralAffairs@gov.scot>; [redacted reg 11(2)]@gov.scot; [redacted reg 11(2)]@gov.scot ; [redacted reg 11(2)]@gov.scot ; [redacted reg 11(2)]@gov.scot; [redacted reg 11(2)]@gov.scot ; [redacted reg 11(2)]@gov.scot ; [redacted reg 11(2)]@gov.scot ; Deputy Director Environmental Quality and Resilience <DDEQR@gov.scot>; Ingebrigtsen R (Ross) <Ross.Ingebrigtsen@gov.scot>; McCaig C (Callum) <Callum.Mccaig@gov.scot>; Mackintosh E (Emily) <Emily.Mackintosh@gov.scot>

Subject: RE: For Cab Sec views - Media Query - Bathing water regulations

Thanks, [redacted reg 11(2)]. Will issue now.

[redacted reg 11(2)]

From: [redacted reg 11(2)]@gov.scot **On Behalf Of** Cabinet Secretary for Net Zero & Just Transition

Sent: 31 March 2023 18:38

To: [redacted reg 11(2)]@gov.scot >; Cabinet Secretary for Net Zero, Energy and Transport <CabSecNetZET@gov.scot>

Cc: Communications Net Zero & Rural Affairs <CommunicationsNetZeroandRuralAffairs@gov.scot>; [redacted reg 11(2)]@gov.scot; [redacted reg 11(2)]@gov.scot ; [redacted reg 11(2)]@gov.scot ; [redacted reg 11(2)]@gov.scot; [redacted reg 11(2)]@gov.scot ; [redacted reg 11(2)]@gov.scot ; [redacted reg 11(2)]@gov.scot ; Deputy Director Environmental Quality and Resilience <DDEQR@gov.scot>; Ingebrigtsen R (Ross) <Ross.Ingebrigtsen@gov.scot>; McCaig C (Callum) <Callum.Mccaig@gov.scot>; Mackintosh E (Emily) <Emily.Mackintosh@gov.scot>

Subject: RE: For Cab Sec views - Media Query - Bathing water regulations

[redacted reg 11(2)]

Cab Sec is content to clear.

Thanks,

[redacted reg 11(2)]

[redacted reg 11(2)]Deputy Private Secretary
Cabinet Secretary for Net Zero and Just Transition
CabSecNZJT@gov.scot
[redacted reg 11(2)]

All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.

Scottish Ministers, Special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

From: [redacted reg 11(2)]@gov.scot

Sent: 31 March 2023 10:37

To: Cabinet Secretary for Net Zero, Energy and Transport <CabSecNetZET@gov.scot>

Cc: Communications Net Zero & Rural Affairs <CommunicationsNetZeroandRuralAffairs@gov.scot>; [redacted reg 11(2)]@gov.scot>; [redacted reg 11(2)]@gov.scot>; [redacted reg 11(2)]@gov.scot>; [redacted reg 11(2)] [redacted reg 11(2)]@gov.scot. ; [redacted reg 11(2)]@gov.scot>; [redacted reg 11(2)]@gov.scot [redacted reg 11(2)]@gov.scot; Deputy Director Environmental Quality and Resilience <DDEQR@gov.scot>; Ingebrigtsen R (Ross) <Ross.Ingebrigtsen@gov.scot>; McCaig C (Callum) <Callum.Mccaig@gov.scot>; Mackintosh E (Emily) <Emily.Mackintosh@gov.scot>

Subject: For Cab Sec views - Media Query - Bathing water regulations

Cabinet Secretary/PO,

We've received the below Media query from The Ferret who are doing a story about SG's bathing water rules, arguing that they're too rigid. The Lib Dems have also provided a quote who have tried to link the issue with the recent sewage overflow story. [redacted – under 10(4)(e) – other internal comms]

The below previously cleared draft lines have been reviewed by policy officials and SpAds who are content. The deadline is **1pm today**.

I appreciate that policy responsibilities are still being finalised but I would be grateful to know if Ms McAllan is content with the below:

Many thanks,

[redacted reg 11(2)]

LINES

A Scottish Government spokesperson said:

“Scotland's bathing waters are not only important to our environment, but they also provide spaces for recreation and contribute to good health and well-being. That's why it's great to see more bathing waters across the country rated excellent than ever before.

We are continuing to work closely with SEPA, Scottish Water and other stakeholders on bathing water designations and to protect and improve bathing waters classifications. This has led to the number of bathing waters increasing since last year to 87, with 98% achieving the bathing water quality standards and more rated excellent than ever before.

“Bathing Water classification in Scotland is undertaken by SEPA following strict standards as set out in the Bathing Waters (Scotland) Regulations 2008. These standards were reviewed by the World Health Organisation in 2018, which concluded they were fit for purpose.

QUERY

Rivers, inland lochs, and seas with bathing water status have their water status monitored regularly by authorities to prevent health risks such as sewage pollution.

But ERCS argues that the SG is making it “effectively impossible” for popular bathing waters on rivers or smaller beaches to gain protection due to a high threshold of how many people use them.

It disputes the SG’s interpretation of a law that requires it to designate a bathing water where it expects a ‘large number’ of people to bathe there. The SG defines the “large number” to be at least 150 people using a beach or bathing water in a single day.

Comparatively, there is no threshold for visitors in England while Wales decides the specific figure for each site. Northern Ireland has a much lower threshold of “over 45 bathers on at least one occasion or over 100 beach users on at least two occasions across a review period”.

ERCS claimed that the SG’s refusal of bathing water status for Almondell in West Lothian last May – due to an insufficient number of bathers – shows how the SG has created “a barrier” to designating bathing waters.

It also called the bathing water application process “problematic” by allegedly limiting the types of accepted evidence to support an application, such as excluding survey numbers taken during organised events.

ERCS said Scotland was “by far the most difficult part of the UK to have a bathing water designated.”

“The Scottish Government’s excessive threshold means that having bathing waters designated on rivers or small beaches is effectively impossible,” said Dr Ben Christman, ERCS in-house solicitor. “Areas which are otherwise popular locations for swimming are unable to obtain the protections that come with official designation.

“Our view is that the 150 bathers threshold is unlawful. The Bathing Waters (Scotland) Regulations 2008 require Scottish Ministers to designate an area as a bathing water if they expect ‘a large number of people to bathe there, having regard to past trends and infrastructure or facilities provided, or other measures taken, to promote bathing’.

“150 bathers is well in excess of a ‘large number’, and it precludes any consideration of past trends and infrastructure or facilities provided, or other measures taken, to promote bathing, contrary to the regulations.

“We raised this directly with the Scottish Government. They told us that the threshold is ‘not a rigid policy’. However, the evidence suggests otherwise – the application form refers to the threshold in mandatory terms and a recent application for the designation of Almondell on the River Almond was refused for failing to meet the threshold.

“We have referred the matter to Environmental Standards Scotland who are now investigating the matter. We have asked ESS to take enforcement action against the Scottish Government to ensure that the minimum threshold is removed and the application process is changed.”

Also passing on criticism. Scottish Liberal Democrat leader Alex Cole-Hamilton said:

"I want Scotland's waterways and bathing sites to be clean and pleasant places for everyone to enjoy. Instead the Scottish Government are conspiring to prevent these sites from gaining protection.

"This comes as no surprise given that ministers are allowing sewage to flow into Scotland's

waterways on more than 10,000 occasions last year. The then environment minister even described such dumping as "vital".

"Keeping our rivers and beaches clean needs to rapidly rise up the Scottish Government agenda. I hope that enforcement action from Environmental Standards Scotland can help to drive that change."

[redacted reg 11(2)]

REASONS FOR NOT PROVIDING INFORMATION

Regulation 11(2) (Personal Information)

Some of the information you requested has been redacted under regulation 11(2) of the EIRs because it is personal data of a third party, i.e. names/contact details of individuals, and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and in section 34(1) of the Data Protection Act 2018. This exception is not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exemption. Where this is the case in the attached documents this information has been marked as [redact – section 11(2)].

Regulation 10(4)(e) (Internal Communications)

An exception under regulation 10(4)(e) of the EIRs (internal communications) applies to some of the information you have requested because it is internal communication in the form of emails between officials as well as briefing for Scottish Government Ministers. This exception is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exception. We have found that, on balance, the public interest lies in favour of upholding the exception. We recognise that there is some public interest in release as part of open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in high quality policy and decision making. This means that Ministers and officials need to be able to discuss policies and potential options to fully understand their possible implications. Disclosing such discussions may undermine or constrain the Government's view on policies while they are still under discussion and development. Where this is the case in the attached documents the information has been marked as [redact – section 10(4)(e) – other internal comms].

The exception under regulation 10(4)(e) of the EIRs (internal communications) also applies to some of the information you have requested because it is internal legal advice and disclosure would breach legal professional privilege. This exception is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exception. We have found that, on balance, the public interest lies in favour of upholding the exception. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, this is outweighed by the strong public interest in maintaining the right to confidentiality of communications between legal advisers and clients, to ensure that Ministers and officials are able to receive legal advice in confidence, like any other public or private organisation. Where this is the case in the attached documents the information has been marked [redact – section 10(4)(e) – legal advice].

Regulation 10(5)(d) (Confidentiality of Proceedings)

An exception under regulation 10(5)(d) of the EIRs (confidentiality of proceedings) applies to some of the information you have requested. This exception applies because disclosure of this information would harm the confidentiality of the proceedings of a public authority where such confidentiality is provided for by law. This is because the Scottish Government bathing water designation process is currently under independent investigation by Environmental Standards Scotland (ESS) and some of the information in scope of your request relates to that process. The confidentiality of ESS proceedings is provided for in law in section 40 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.

This exception is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exception. We have found that, on balance, the public interest lies in favour of upholding the exception. We recognise that there is some public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, we consider that this is outweighed by the public interest in allowing the independent investigation process to proceed without being affected by external factors as provided for in law. Where this is the case in the attached documents the information has been marked [redact – section 10(5)(d) – Confidentiality of Proceedings].

ESS have not indicated when they will issue their full final report, however this will be published on the ESS webpages; <https://environmentalstandards.scot/>

You may wish to submit a further request for this information once this process has concluded.