
DIRECTIONS

ENVIRONMENTAL PROTECTION

The Scotland River Basin District (Quality of Shellfish Water Protected Areas) (Scotland) Directions 2021

Made - - - - *4th March 2021*

Coming into force - - *15th March 2021*

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 2021 and come into force on 15th March 2021.

(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.

Revocation

2. The Scotland River Basin District (Quality of Shellfish Water Protected Areas) (Scotland) Directions 2015 are revoked.

Interpretation

3.—(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(a), as amended from time to time;

(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.

“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);

“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(b);

“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(c);

“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

4.—(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) “excellent” if it satisfies the standard for ‘Excellent’ in the table below;
- (b) “good” if it otherwise satisfies the standard for ‘Good’ 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>	
Excellent	Good
≤ 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(d) 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(e).

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

(b) “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”.

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

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

(e) 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**

5.—(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,
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4th March, 2021

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