



Department
for Environment
Food & Rural Affairs

Consultation on reform of the Bathing Water Regulations 2013 November 2024



Llywodraeth Cymru
Welsh Government



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Please respond to this consultation using the citizen space consultation hub at: <https://consult.defra.gov.uk/water/bathing-water-reforms-consultation>

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1. Executive Summary

Bathing waters are currently managed under the Bathing Water Regulations 2013 (hereafter, 'the Regulations') which apply to both England and Wales. The Regulations transposed the 2006 EU Bathing Water Directive into domestic law and were assimilated into UK law under the Retained EU Law (Revocation and Reform) Act 2023.

Following final designation as bathing waters, coastal and inland waters are monitored by the Environment Agency (EA) in England and Natural Resources Wales (NRW) in Wales respectively. Water quality sampling and testing is used by local authorities to inform public health messaging on the health risks associated with bathing and identify where improvements are necessary.

There have been changes in how and where people use bathing waters since the Regulations were introduced. In their current form, the Regulations take a generally 'one-size-fits-all' approach to bathing water designations, water quality monitoring and the de-designation process. There may be advantages to reforming the Regulations to allow for greater consideration of site-specific factors in these processes. The purpose of the Regulations is to ensure the protection of public health through the use of monitoring and classifications. It is the government's intention to pursue an increase in the designation of safe bathing water sites.

For these reasons, Defra and the Welsh Government are consulting on potential reform measures to improve the current Regulations and increase flexibility. This consultation seeks views on 3 proposed reforms as well as 9 technical amendments to improve the use of EA and NRW resources and bring the Regulations in line with modern sampling practices. It also seeks views on two wider reforms that may form part of future phases of regulatory reform. This is a joint consultation from Defra and the Welsh Government. The decisions on whether legislation should be made to introduce reforms will be taken independently by relevant Ministers with respect to their own national jurisdictions. Regulations are currently shared, but the EA & NRW independently manage bathing waters within their own national jurisdiction.

Proposed reforms

Core reform 1: Remove the automatic de-designation provision from the Regulations. Currently, bathing waters are automatically de-designated following five consecutive years of 'poor' classification. This is often too short a time for investments and improvements to be made. De-designations would instead be based on review and recommendation by the EA and NRW.

Core reform 2: Include the feasibility of improving a site's water quality to at least 'sufficient' as a criterion for final designation. This would avoid poor value for money, by limiting expenditure where water quality improvement is not feasible or proportionate.

Core reform 3: Remove the fixed dates of the monitored bathing season from the Regulations. Season dates would be moved into guidance allowing the EA and NRW to adapt the dates to better suit local needs in the future.

Wider reform 1: Clarification and expansion of the definition of ‘bathers’ to include other water users. ‘Bathers’ is currently understood by its common meaning as swimmers only. We are seeking views on whether a wider range of water users should be considered, and if so, what other types of users should be included and how their needs can be balanced against current users.

Wider reform 2: Use of multiple monitoring points at each bathing water site where useful to classify water quality. We are seeking views on whether additional monitoring to capture water quality variation across sites would be beneficial.

2. Consultation objectives

Through this consultation, Defra and the Welsh Government are seeking as wide a range of views as possible on the proposed reforms to the Bathing Water Regulations 2013 for England and Wales. This consultation document summarises the evidence and rationale for each proposed reform.

Scope of consultation

The objective of this consultation is to seek the view of the public and stakeholders with regards to the following reforms:

- 3 core policy changes
- 9 technical amendments
- 2 wider policy changes that may be included in any future phases of reform

This consultation seeks views on:

- Whether you support the proposed reforms.
- Whether you foresee any negative impacts from the proposed reforms, and what these impacts might be.

As part of this consultation, we are also seeking views and evidence on potential wider changes to the Regulations. These will be used to inform Defra’s and the Welsh Government’s decisions on whether to recommend that the Secretary of State for Environment, Farming and Rural Affairs and Cabinet Secretary for Climate Change and Rural Affairs should pursue future phases of reforms.

This consultation is aimed at all those who have an interest in bathing waters. This may include:

- Local authorities, particularly those with bathing waters and potential bathing waters in their jurisdiction.
- Local representatives such as councillors or Members of Parliament.
- Private landowners with bathing waters and potential bathing waters on their land.
- Farmers and landowners, and their representatives, in the vicinity of bathing waters and potential bathing waters whose land may impact local bathing water quality.
- Businesses and business owners, including water companies and those related to leisure and tourism, that may be impacted by bathing water designation and monitoring processes.
- Public interest groups with an interest in bathing and other water-based sports and recreation, bathing waters, and environmental protection.
- Members of the public with an interest in bathing and bathing waters.

This is a joint consultation which will consider views from stakeholders in both England and Wales. Although the current Regulations apply to both England and Wales, the management and supervision of bathing waters is devolved. There is scope for England and Wales to deviate from aligned policy, however alignment can be useful as activities that affect one part of the UK may impact another. Following this consultation, the decisions on whether these reforms should be taken forward in legislation will be taken independently by the UK Secretary of State for Environment, Farming and Rural Affairs and the Welsh Cabinet Secretary for Climate Change and Rural Affairs for their respective jurisdictions.

Introduction and policy context

In recent years there has been considerable public interest in water quality, including the supply and management of water and water treatment infrastructure and its impact on the natural environment and public health. Both the UK and Welsh Governments are committed to making the changes needed to deliver clean and safe bathing water to the public.

Bathing waters are one of the most visible ways in which the public interacts with the water environment and so it is critical that appropriate regulations meet the needs of the public and those involved with managing bathing water sites. These reforms sit within a wider body of work being undertaken by the UK and Welsh Governments to improve water quality.

What is a Bathing Water?

Popular coastal and inland waters that attract a large number of bathers can be designated as bathing waters under the Regulations.

Designating a site as a bathing water means the site will be subject to a programme of water quality monitoring by 'appropriate agencies' - the EA in England, and NRW in Wales. Their focus is to work collaboratively with partners including local authorities, water companies and local landowners to identify any pollution sources and to put in place actions to address these issues, bringing social, economic, leisure and health benefits.

Under the current Regulations, the EA and NRW monitor water quality at designated bathing water sites throughout the bathing season, which in England and Wales runs from 15 May to 30 September. Water is sampled and tested for intestinal enterococci and *Escherichia coli* (*E. coli*) that may be harmful for bathers.

As per current Regulations, bathing waters are classified as 'excellent', 'good', 'sufficient' or 'poor', based on the EA and NRW assessment of the level of bacteria (intestinal enterococci and *Escherichia coli*) in the water over the preceding rolling four-year period. Under current regulations, if a bathing water site receives a classification of 'poor' for five consecutive years, it is automatically de-designated, and local authorities must issue permanent advice against bathing.

Designation, monitoring and effective coordinated action has had a positive impact on water quality at sites used by the public across the country. In the 2023 season, 96% of bathing waters in England met the minimum standards, with 90% classified as 'good' or 'excellent', compared to 45.7% in 1995, despite the classification criteria becoming stricter in 2015. In Wales, 98% of bathing waters met bathing water quality standards in 2023, with 92% classified as 'good' or 'excellent'.

Under the Regulations, the local authority must display public information about water quality and pollution sources at designated bathing waters during the bathing season. The information displayed is made available to the authority by the EA and NRW.

Case for Change

This Government has inherited a broken water system: repeated failures for customers and record levels of sewage polluting our rivers, lakes and seas. This must not happen ever again. A most critical priority is a fundamental reform of the culture of the water sector, so customers and the environment are put at the heart of everything water companies do. This unacceptable destruction of our waterways should never have been allowed, but change has now begun so it can never happen again. This change cannot happen overnight, but this government is committed to taking further steps to reform the water sector and restore our rivers, lakes and seas to good health.

The majority of the 560 bathing waters designated under the Regulations in England and Wales are sites at popular beaches that attract large numbers of bathers. We recognise that there have been changes in how and where the public use bathing

waters in recent years. For example, there has been an increase in the number of inland waters (rivers and lakes) that have been designated as well as a notable increase in public interest in bathing waters, in part driven by the rise in popularity of wild swimming and other water-based sports and recreation. Many stakeholders have called for the Regulations to be updated to reflect the modern ways in which the public uses bathing waters so that they continue to support public health outcomes. This government has listened to their concerns.

A lack of flexibility to tailor monitoring requirements to meet local needs is a challenge that restricts activities of the EA and NRW throughout the Regulations. Making the Regulations more flexible and adaptive to site-specific and local circumstances will allow for the best delivery for the public and help further future-proof the system. Updating the technical requirements in the Regulations will also help modernise current practice.

To respond to these challenges, we have developed a package of reforms and proposals. This consultation seeks public views to inform whether these reforms should be taken forward to legislative scrutiny.

3. Consultation Questions

The consultation questions related to each proposed reform are shown throughout the consultation document. Questions 1-8 ('Information About You') cover information that will be used for data management and processing. These questions are shown at the end of this document. For further information about how personal and identifiable information will be used as part of this consultation, please see the programme privacy notice.

'Information About You' consultation questions

Q1. Would you like your response to be confidential? *(required)*

- Yes
- No

Q2. If you answered yes, which information would you like to keep confidential and why? *(not required)*

Q3. Please provide your full name. If you are representing an organisation or group, you will be asked its name later. *(required)*

Q4. Please provide your email address. *(required)*

Q5. In what capacity are you completing this consultation? *(required)*

- As a private landowner with bathing waters and potential bathing waters on their land
- As a farmer or land manager whose land may impact local bathing water quality
- As a representative of a water company
- As a business that may be impacted by changing bathing water regulations
- As a local authority
- As an NGO or other non-profit public interest group
- As a member of the public with an interest in bathing waters
- As a public representative (*for example*, Councillor, MP, etc.)

Q6. [If LANDOWNERS, WATER COMPANY, BUSSINESS, LOCAL AUTHORITY or NGO in Q5] What is the name of the organisation or interested group that you are responding on behalf of? *(required)*

Q7. Where are you currently based yourself? *(required)*

- England
- Scotland
- Wales
- Northern Ireland
- Outside the UK, within the EU
- Outside the UK, outside of the EU

Q8. [If LANDOWNERS, WATER COMPANY, BUSSINESS, LOCAL AUTHORITY or NGO in Q5] Where does your business or organisation operate? *(required)*

Check all that apply

- England
- Scotland
- Wales
- Northern Ireland
- Not applicable

4. Proposed Reforms

To meet the identified deficiencies in the current Regulations we are proposing three core substantive reforms that will:

1. Remove the automatic de-designation provision from the Regulations.
2. Amend the Regulations to include the feasibility of improving a site's water quality to a least 'sufficient' standard as a criterion for final designation.
3. Remove the fixed dates of the monitored bathing season from the Regulations.

This section sets out the justification and identified benefits of each reform as well as alternative policy options considered, and wider information that has informed decision making.

Reform 1 - Remove the automatic de-designation provision from the Regulations.

What will change?

This reform would:

- Remove the automatic de-designation provision from the Regulations (reg 13(2)(a)).
- Implement a new provision requiring the EA or NRW to review whether it is feasible and proportionate (on cost and deliverability grounds) to improve the water quality to 'sufficient' standard at any designated bathing water that has been classified as 'poor' for five consecutive years.
- Require the EA or NRW to make a recommendation to Defra or the Welsh Government when a site is classified as 'poor' for five consecutive years on whether the site should be given longer to improve or instead should be de-designated, with the final decision taken by Defra or Welsh Government ministers.
- Set out how the review process will work and what evidence will be considered. Using non-statutory Defra or Welsh Government guidance on de-designation published and made available to the public on GOV.UK or GOV.WALES once the Regulations are amended.

Why is this reform needed?

Under the current Regulations, bathing waters are automatically de-designated if they are classified as 'poor' for five consecutive years. One of the intended aims of this provision is to incentivise rapid improvements of bathing water sites by providing a deadline for local stakeholders to make investments to improving water quality. De-designation and the resulting advice against bathing at sites may cause damage to local tourism and recreation industries, reduced recreational water opportunities, missed environmental targets as focus shifts from improving a bathing water and the loss of a local public amenity. De-designation should therefore be viewed as a last resort, brought in to protect public health in situations where improving water quality is not feasible or proportionate.

When a bathing water is initially classified as 'poor', an investigation is triggered and the EA or NRW begin a process of identifying pollution sources and coordinating local stakeholders to respond. These investigations can involve testing for indicators associated with different sources, on-site visits and inspections of local infrastructure to determine the origin(s) of pollutants. At sites where sewerage infrastructure is unlikely to be a significant contribution, an assessment of other likely sources is required, which may include modelling of land use around a site. This modelling can be a lengthy and expensive process. Once sources have been identified, the EA or NRW will notify the managers of the pollutant sources and instruct them to make the required improvement or modifications or construct new assets to prevent pollution. The required planning, investments, and works can similarly be a lengthy process.

In addition, stakeholders such as water companies often manage infrastructure investment planning in multi-year cycles. For example, water companies use a Price Review and Asset Management Period (AMP) of five years to accommodate strategic resource planning and budgeting. Therefore, the need for investment to improve a site to 'sufficient', as identified by the EA or NRW, may align poorly with the water companies' funding cycles, which can cause challenges with planning and significantly delay investment in cases where final designations are made mid-cycle.

This means that despite existing systems to ensure investment takes place, five years is often not long enough for water quality at sites to be understood and improved to a 'sufficient' classification. Following de-designation, the EA and NRW are no longer able to instruct local stakeholders to act under the Regulations, resulting in sunk costs, poor value for money and poor outcomes in improving water quality.

Defra and the Welsh Government considered whether it would be appropriate to extend the consecutive period before which a bathing water classified as 'poor' would be de-designated. However, applying a one-size-fits-all limit to all contexts would still leave some sites unable to feasibly improve, even within an extended period. In such cases, increasing the time period to a fixed length before automatic de-designation may lead to greater sunk costs for local stakeholders and poorer value for money. For this reason, removing the de-designation provision and allowing a more flexible model that considers sites on a case-by-case basis is a fairer and more balanced approach.

This reform is not designed to allow bathing water sites to remain classified as 'poor' indefinitely. It is a priority for all parties that sites classified as 'poor' are improved to 'sufficient' standard or better to protect the health of bathers. This reform simply allows bathing waters additional time to meet 'sufficient' standard. Under this reform, the EA and NRW would undertake a review of sites classified as 'poor' periodically, in addition to regular monitoring, to assess progress towards improving water quality. By engaging with local stakeholders such as the local authorities, landowners and water companies,

using existing evidence where available and producing new evidence where needed, the EA or NRW would assess the costs and deliverability of the site reaching bathing water 'sufficient' standard and whether this is feasible or proportionate to achieve. In cases where it is assessed as not feasible or proportionate to make improvements, the EA or NRW would recommend sites are de-designated. This reduces the risk of harm to the local economy through premature de-designation, and encourages local stakeholders to make the investments needed to improve water quality.

This proposed reform does present some risks in the form of additional costs to relevant authorities to monitor additional 'poor' bathing waters. There may also be damage to the local recreation and tourism sectors through extending the designation life of 'poor' bathing waters, and the potential to cause the public to bathe in areas of poor water quality for longer periods.

The EA and NRW will publish detailed processes and public-facing guidance for how sites will be assessed, including assessment criteria, cost-benefit thresholds and engagement with stakeholders and local authorities. Defra and Welsh Government ministers will make the final decision on whether a site should be de-designated as a bathing water.

Published guidance will set out the conditions under which reapplication may be considered.

Evaluation Questions

Q9. To what extent do you agree or disagree with the proposed removal of automatic de-designation from the Bathing Water Regulations 2013 for England and Wales?
(required)

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Q10. Please give reasons for your answer. *(not required)*

Reform 2 - Amend the Regulations to include the feasibility of improving a site's water quality to at least 'sufficient' as a criterion for final designation

What will change?

This reform would:

- Amend the Regulations so that the feasibility of improving a site to bathing water to at least 'sufficient' standard (on cost and deliverability grounds) becomes a criterion that can be taken into account where necessary before a decision is made whether to fully designate the site as a new bathing water.
- Allow physical safety and environmental protections to be considered before final designation.
- Set out how this assessment of feasibility will work and what evidence will be considered in non-statutory Defra and Welsh Government guidance on the bathing water designation process published and made available to the public on GOV.UK and GOV.WALES once the Regulations are amended.

Why is this reform needed?

Under current regulations, for a site to be designated as a new bathing water, it must meet the minimum requirement of:

- Being a coastal or inland water (which is not a swimming pool, spa, confined water that is treated or used for therapy or an artificially created confined water that is separated from surface water or groundwater).
- Having a large number of bathers, specified in England as at least 100 bathers a day, during the bathing season (15 May to 30 September). (Guidance only)
- In England, sites must also have toilet facilities bathers can use during the bathing season, within 500m of the site. (Guidance only)

Other information including local land permissions, local authority consent, and information about wider infrastructure and facilities to promote bathing (for example, parking, accessibility and lifeguards) is also collected as part of the designation application process to aid decision making. Currently in Wales the *only* consideration given in advice to a potential bathing water is bather numbers.

Currently the Regulations do not allow for any consideration of existing water quality, physical safety to the public, environmental protections and the costs associated with improving water quality to bathing water 'sufficient' standard. This means sites are designated without a clear view of the likely costs, deliverability and benefits of improving the water quality to bathing water standard, and whether it would be feasible

or proportionate to attempt to do so. In accordance with the Regulations, the EA or NRW have a duty to attempt to coordinate local investment actions to improve water quality to bathing water 'sufficient' standard following final designations where water quality is poor. This duty applies even when it is unclear whether investment will result in substantive improvements to water quality.

We propose to mitigate these risks by amending the Regulations so that physical safety, environmental protections and the feasibility of improving the water quality of a bathing water site to at least 'sufficient' standard (on cost and deliverability grounds), becomes a criterion that can be taken into account when deemed necessary. This would be before a final designation decision is made. In doing so we will avoid poor use of resources at an early stage, allowing more strategic investment into sites where value for money can be achieved. This reform will provide an understanding of water quality prior to final designation that can be used to inform the public of health risks. It may also provide local stakeholders with useful information on likely sources of pollution from the outset.

As part of the policy design process, Defra and the Welsh Government considered amending the Regulations such that proposed bathing water sites were required to have at least 'sufficient' water quality prior to final designation. However, this would result in fewer designated sites, particularly river locations where water quality is typically poorer than coastal areas due to the increased impact of upstream pollutant sources and the reduced opportunity for pollutant dispersal. We do not intend to restrict designations to sites which are already 'sufficient' or above, but ensure that 'poor' sites are only fully designated where it is feasible and proportionate to improve the water quality to 'sufficient' standards. The reform seeks only to avoid sunk costs and poor value for money in cases where improvements are not feasible or proportionate. Public health will also be protected by not designating bathing waters that cannot be brought up to at least 'sufficient' water quality, and removing a false sense of assurance for water users around safety of bathing in designated bathing water sites. However, as is currently the case, public health advice may not be made available for undesignated bathing sites with poor water quality.

EA and NRW will publish detailed processes and public facing guidance for how sites will be assessed, including assessment criteria and cost-benefit thresholds. This will include engagement with local stakeholders such as local authorities, landowners and water companies, as is already the case in the pre-designation application process. It is likely that some of the following elements, when deemed appropriate, would need to be included in the process to enable Defra and the Welsh Government to decide whether the likely costs, deliverability and benefits would warrant designation of the site as a bathing water:

- An initial triage stage whereby applications are assessed using desk-based analysis and limited historic/existing/initial sampling data to gauge their potential to achieve compliance with bathing water 'sufficient' standard and identify cases that are highly likely to meet 'sufficient' standard or higher. These sites will be considered for final designation.
- For sites that are not identified as likely to meet 'sufficient' standard or higher, water quality monitoring at the site may take place for at least one season to assess water quality and variations.
- Once sampling data is gathered, sites that meet bathing water 'sufficient' standard will be considered for final designation.
- For sites that do not reach the minimum standard, the gap to compliance could be estimated. These data would then be used as inputs to a cost-benefit assessment to determine the suitability of final designation.
- Applicants would be kept informed at agreed intervals throughout this process.

Defra and WG in collaboration with the EA and NRW will also publish guidance detailing approaches to public communications in cases where potential sites are not designated on the grounds of feasibility to improve. This may include local authorities placing permanent signage at sites as well as public health advice online. As is currently the case, Defra and Welsh Government ministers will make the final decision on whether a site can be designated as a bathing water. Decisions cannot be appealed against. Published guidance will set out the conditions under which reapplication may be considered.

This reform does present financial risks in the form of disincentivising investment for sites with poor water quality, reducing the likelihood of them improving. The lack of designation for some sites might also mean a reduction in funding for the protection of the natural environment around sites. Additionally, there may be costs to relevant authorities to carry out additional pre-designation monitoring and assessment of sites.

However, this reform will allow more strategic use of local and national resources by avoiding sunk costs and poor value for money, this also serves to protect public health, by not designating sites which can't be improved to at least 'sufficient' standards. By considering environmental protections and physical safety also, investments can be prioritised towards sites where it is feasible and proportionate for water quality to reach bathing water 'sufficient' standard or above, creating the greatest value and assurance for local stakeholders and water users.

Evaluation Questions

Q11. To what extent do you agree or disagree that water quality, the feasibility to improve water quality to 'sufficient' standard, physical safety and environmental protections be considered before deciding whether to designate a site as a bathing water under the Bathing Water Regulations 2013 for England and Wales? *(required)*

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Q12. Please give reasons for your answer. *(not required)*

Q13. How should the public be notified that a site has been considered as a bathing water but not designated on the grounds that it is not feasible to improve water quality to a 'sufficient' standard? *(required)*

Check all that apply

- On site signage
- Notification on the Swimfo website in England or Bathing Waters Explorer Website in Wales.
- Notification on GOV.UK or GOV.WALES
- Notification on the EA or NRW bathing water website
- No additional notification

- Other (please specify)

Reform 3 - Remove the fixed dates of the monitored bathing season from Regulations

What will change?

This reform would:

- Remove the current fixed dates of the monitored bathing season from the regulations (reg 4).
- The dates of the monitoring season would instead be set in non-statutory Defra and Welsh Government guidance on bathing waters to be published and made

available to the public on GOV.UK and GOV.WALES once the Regulations are amended.

Why is this reform needed?

The dates of the monitored bathing season are currently set in the Regulations as 15 May to 30 September. The season represents the time of year when a large majority of bathing takes place. This is a one size-fits-all approach which is suitable for many but not all local contexts. In practice, regional variations in weather, climate and site geography result in slightly shorter or longer periods where bathing waters experience peak use or where bathing would be advised. Currently, as the season dates are prescribed in law, the EA and NRW are prohibited from adapting their monitoring practices based on these site-specific conditions.

We propose removing the fixed dates of the monitored bathing season and requiring EA/NRW to monitor during peak use periods. Non-statutory guidance on this could be provided. Guidance will specify that each bathing water will be monitored by the EA/NRW for a set period of the year. The monitoring period for each site will be published to allow the public to make informed choices in and outside of peak use periods.

This change would align England and Wales with Scotland, where the dates of the monitoring season are set in guidance. As is the case in Scotland, it is likely that most sites would continue to follow the current dates of the monitoring season.

This reform will not reduce the frequency of monitoring at designated bathing water sites but would change the number of samples used to make an assessment. As the EA and NRW will be able to take a more flexible approach to monitoring, it may improve the agencies' capacity to plan and deliver their site monitoring schedule to meet local needs. This will allow greater flexibility to manage bathing waters on a site-by-site basis and ensures that monitoring and public health information will be made available at times when bathers use sites. This ensures a more strategic use of public resources and funds.

It is understood there are a number of prospective bathing waters where flexibility of the monitoring programme would be beneficial in supporting the local environment, wildlife and habitats. For example, sites located within Sites of Special Scientific interest (SSSI) and Special Areas of Conservation (SAC) are granted protections under the Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2017. Creating a flexible bathing season may allow new bathing water designations whilst ensuring our environment as well as human health remains protected.

In recent years there has been substantial public interest in extending bathing water monitoring regimes to encompass year-round monitoring. There has been an increase in popularity in cold water and wild swimming, meaning that bathing waters are frequently being accessed outside of the current season. Defra and the Welsh Government considered whether setting year-round monitoring at all bathing sites in the Regulations would be a suitable policy option in this phase of reforms.

Introducing year-round monitoring would require a substantial change to the classification system in use by the EA and NRW. Water quality and health risks can vary over the course of the year based on seasonal environmental factors including rainfall, human activity around a site, seasonal behaviour of wildlife, and seasonal agricultural processes. The current system has been designed to inform users of the likely risks to health when accessing the water during the current bathing season and will need revising to reflect seasonal variations. There will also be additional complexity with the classification system if some sites are monitored year-round but others, where there is less usage outside of the summer months, remain with monitoring during the current dates.

Furthermore, year-round monitoring would involve a significant change to the EA and NRW delivery and operational model including additional considerations around when it is feasible and safe for samples to be taken. Year-round monitoring would lead to an increase in the required EA and NRW resource and capacity, both for collecting the samples and processing them in the laboratory. Such a resource increase will require additional funding. Resourcing and funding factors must be fully considered and balanced before a decision on pursuing year-round monitoring as an option can be made. The removal of fixed dates of the monitored bathing season does, however, lay the foundations for extended monitoring in the future.

We recognise that any extension of the bathing season would have implications on permits for water company assets. For example, disinfection at nearby wastewater treatment works may be required for a longer period than is currently in operation, as well as expectations on other businesses which may impact bathing water quality outside the current bathing season. These implications will need to be fully considered before a site-specific bathing season is extended by the Secretary of State for Environment, Farming and Rural Affairs or Cabinet Secretary for Climate Change and Rural Affairs depending on location.

Evaluation Questions

Q14. To what extent do you agree or disagree with the proposed increase in flexibility of Bathing Season dates prescribed in the Bathing Water Regulations 2013 for England and Wales? *(required)*

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Q15. Please give reasons for your answer. *(not required)*

5. Technical Amendments

In their current form, the Regulations contain numerous requirements that do not align with best practice approaches in monitoring and operations delivered by the EA and NRW. In most cases, these represent out of date methods that are no longer needed, or practices that use up valuable resources without contributing to classification, reporting or public understanding of risks associated with accessing bathing waters.

We are seeking to amend these requirements to improve use of resources and value for money in EA and NRW monitoring programmes. Table 1 provides details of the proposed amendments and appropriate rationales.

Table 1: Proposed technical amendments to the Bathing Waters Regulations 2013

Proposed technical amendment	Rationale for amendment
<p>1. Have a defined area for each bathing water</p>	<p>Currently, the waters used by members of the public are in roughly defined areas, for example the area adjoining a beach, or an accessible stretch of a river.</p> <p>This reform would update the Regulations to match this reality and provide a consistent understanding for all stakeholders. This would also provide a clearer understanding of what parts of the water are used to support decisions on infrastructure improvements that might be needed, including through the Asset Management Plan (AMP).</p>
<p>2. Remove the requirement to take a sample to end short-term pollution (STP) events</p>	<p>A short-term pollution (STP) event is an event in which a bathing water site is contaminated by a known source and where the contamination is expected to affect bathing water quality for no more than approximately 72 hours. During an STP, pollution risk warnings are issued and advice against bathing is displayed.</p> <p>Under current regulations, the EA and NRW are required to take and test an additional water sample to end an STP.</p> <p>The time needed to process samples is approximately 2-4 days. The bacterial quality of water is known to vary greatly even over the course of a day making one sample unrepresentative of the range of quality variations over a day or an STP event. Further as STPs do not last more than approximately 72 hours, the water quality at the time of sampling will not correlate with that at the time the results are produced. This means a sample taken after or during STP does not provide useful data on whether a STP event has ended as by the time the results are available the quality will have changed.</p>
<p>3. Remove the 7-day time limit in which a replacement sample under STP has to be taken</p>	<p>Under current Regulations, the EA and NRW must take a sample to replace regular sampling taken during an STP so the required number of site samples does not fall below the minimum standard. This sample must be taken 7 days after the sample taken during the STP.</p> <p>In practice this provision is very rarely used as site sampling is kept well above minimum thresholds and therefore a replacement sample is usually not needed. Further the 7-day restriction presents considerable logistical challenges to achieve without a clear reason for this to be required, removal of the time limit would remove these challenges.</p>
<p>4. Remove the requirement to take</p>	<p>Current Regulations require a sample to be taken at each bathing water site shortly prior to the start of the bathing season for the site to be classified that season. The intended purpose of taking a pre-season sample is to highlight potential issues at sites prior to the start of the bathing season.</p>

<p>a pre-season sample</p>	<p>Sampling is most effective when used to determine long-term trends in water quality when comparing multiple samples over a period of time, therefore a single sample is unlikely to provide data about issues at sites which can be used to inform public health recommendations. The Regulations currently require this sample to be taken and used for classification thus extra resource be taken to ensure this requirement is met. This sample is taken outside of the season yet it is required to be used for classification making the classification less representative of the designated season. As all sites are subject to regular sampling, it is not anticipated that removing the pre-season sampling requirement will result in negative consequences for bathers or the ability of the relevant agencies to share high-quality public health guidance.</p>
<p>5. Specify 95th percentile z-value to three decimal places, rather than the current 2 places</p>	<p>This is a highly technical amendment to the allowed precision of values used to calculate water quality classifications. In what is understood to be an omission in error from the original EU Directive, different z-values are specified to a different number of decimal places. We have been unable to identify a sound statistical justification for this difference. The suggested reform would specify all z-values to three decimal places for purposes of consistency and comparison.</p> <p>In practice this change is unlikely to amount to large enough differences in calculated water quality statistics to impact the classifications given to sites. It is however conceivable that sites within 1 percentile point of class boundaries could give a more precise classification based on this change thus reducing the chance of misclassification.</p>
<p>6. Remove requirement to identify and provide contact details of any person responsible for taking action over STP' in bathing water profile</p>	<p>Under current Regulations there is a requirement to provide contact details for 'any person' responsible for actioning a STP event on a site's bathing water profile on Swimfo in England and the NRW bathing water explorer in Wales.</p> <p>In reality, no lone individual is responsible for STP actions, therefore the EA/NRW has been sharing generic agency contact details so that correspondence can be subject to the internal correspondence triage when needed. The proposed change would simply update the Regulations in line with existing practice.</p>
<p>7. Remove specific requirement to identify sample and paperwork using indelible ink</p>	<p>Since the Bathing Waters Regulations 2013 were introduced, new and more practical technologies have been introduced to replace marking sampling paperwork with indelible ink, such as barcodes and stickers, electronic tracking systems, and electronic documentation. This proposed change will update the Regulations in line with current practice.</p>
<p>8. Removing the requirement to</p>	<p>An Abnormal Situation is an event or combination of events impacting bathing water quality which the EA and NRW would not expect to occur approximately more than once every four years. In such</p>

<p>replace samples during Abnormal Situations</p>	<p>situations the EA or NRW is currently required to suspend monitoring, and then take replacement samples to replace those missed, immediately after the Abnormal Situation has ended.</p> <p>In most cases, enough samples are taken over a bathing season such that a replacement sample is not needed to meet minimum sampling levels. As abnormal situations can be retrospectively applied considerable effort is taken to take additional samples 'just in case' whenever a potential abnormal situation may have taken place to allow a sample to be available to replace one disregarded by an abnormal situation. As a result, while the additional sample taken immediately following an Abnormal Situation is rarely used it requires a disproportionate effort to ensure compliance with the Regulations requirements.</p> <p>In most cases, enough samples are taken over a bathing season such that a replacement sample is not needed to meet minimum sampling levels. As a result, the additional sample taken immediately following an Abnormal Situation is rarely used.</p> <p>The proposed reform would remove the need to take replacement samples where they do not benefit understanding of water quality at sites. This would have significant benefits for the relevant agencies' sampling and testing capacity.</p>
<p>9. Amend regulation 5(1)(a) to specify a new target date by which all bathing waters should be classified as at least 'sufficient'</p>	<p>The Regulations state that government bodies will exercise their relevant powers to ensure that, by the end of the bathing season in 2015, all bathing waters are classified under regulation 11 at least as "sufficient". This remains an ongoing target; we will therefore update this target to a future date to ensure that relevant authorities continue to work towards this.</p>

Evaluation Questions

Q16. Are you content with the 9 proposed technical amendments listed above?
(required)

- Yes
- No
- Don't Know

Q17. [If 'No' to Q16] Which of the 9 proposed technical amendments do you feel raises concerns or may have negative impacts? (required)

1. Have a defined area for each bathing water
2. Remove the requirement to take a sample to end short-term pollution (STP) events
3. Remove the 7-day time limit in which a replacement sample under STP has to be taken
4. Remove the requirement to take a pre-season sample
5. Specify 95th percentile z-value to three decimal places, rather than the current 2 places
6. Remove requirement to identify and provide contact details of any person responsible for taking action over STP' in bathing water profile
7. Remove specific requirement to identify sample and paperwork using indelible ink
8. Removing the requirement to replace samples during Abnormal Situations
9. Amend regulation 5(1)(a) to specify a new target date by which all bathing waters should be classified as at least 'sufficient'

Q18. [If 'No' to Q16] What negative impacts do you foresee as a result of the technical amendment(s)? (required)

- The amendment(s) reduces overall statutory monitoring requirements.
- The amendment(s) may reduce the information available to the public about when it is safe for them to use a bathing water.
- The amendment(s) reduces overall accountability on the EA or NRW.
- The amendment(s) may reduce the rigorousness of the monitoring methods.

- Other (please specify)

Impact Assessment Questions

We're particularly interested in answers from:

- Businesses
- Farmers
- Landowners
- Local authorities
- NGOs
- Water companies

Q19. Do you consider it likely that any of the proposed reforms will have a negative or positive economic impact on your organisation? (*required*)

- Overall Positive (This could include but isn't limited to gain in profit/revenue or reduced expenditure)
- Overall Negative (This could include but isn't limited to loss in profit/revenue or increased expenditure)
- A mixture of positive and negative impacts
- No change
- Don't Know

Q20. [If 'Negative' to Q19] At this time, which range best describes the estimated annual negative impacts on your business or organisation should reforms be introduced? (*Not required*)

- Less than £10,000/year
- £10,001 - £50,000/year
- £50,001-£100,000/year
- £100,001-£1,000,000/year
- More than £1,000,000/year
- Don't know
- Prefer not to say

Q21. [If 'Negative' to Q19] How would you describe the extent of the expected impact on your business or organisation? (*Not required*)

- Minor impact
- Significant impact
- Very significant impact

- Don't know

Q22. [If 'Negative' to Q19] Why do you consider it likely that the proposed reforms will have an overall negative impact? Please add anything here that you want us to consider.

Q23. [If 'Positive' to Q19] At this time, which range best describes the estimated annual positive impacts on your business or organisation should reforms be introduced? (*not required*)

- Less than £10,000/year
- £10,001-£50,000/year
- £50,001-£100,000/year
- £100,001-£1,000,000/year
- More than £1,000,000/year
- Don't know
- Prefer not to say

Q24. [If 'Positive' to Q19] How would you describe the extent of the expected impact on your business revenue? (*not required*)

- Minor impact
- Significant impact
- Very significant impact

Q25. [If 'Positive' to Q19] Why do you consider it likely that the proposed reforms will have a positive impact on your business or organisation? Please add anything here that you want us to consider. (*not required*)

Q26. [If 'A mixture of positive and negative impacts' to Q19]. What are the main reasons for your answer? Please add anything here that you want us to consider. (*not required*)

6. Wider Reforms and Call for Evidence

In addition to our currently proposed reform package both governments are considering further phases of amendments to the Regulations so that they meet the needs of both the public and the EA and NRW monitoring teams. This consultation seeks views and evidence that will inform these future phases. Specifically, these wider reforms are the expansion of the definition of bathers, and the use of multiple monitoring points at sites to inform classifications. We are seeking to expand our evidence base through this consultation ahead of potential inclusion in future phases of reforms.

Wider reform 1 – Clarification and expansion of the definition of ‘bathers’ to include other water-users

The term ‘bathers’ in the Regulations is currently understood by its common definition to mean swimmers only. However, in recent years there has been a rise in popularity of other ways that the public uses our waters. There are more rowers, surfers, kayakers and paddle boarders amongst other water-users who also increasingly use bathing waters out of season. In order to make the Regulations better reflect modern usage and reflect this trend, we are seeking views on whether to clarify and expand the definition of ‘bather’ to include a greater array of water-users.

Potential benefits of this reform include helping non-swimmers to better understand the health risks of using bathing waters, positive impacts for local leisure and tourism economies, and more sites could become eligible for bathing water designation. However, this reform may introduce uncertainty to the public health advice and who it applies to, and it could be a poor use of public money in monitoring sites with few swimmers.

Wider reform 2 – Use of multiple monitoring points at each bathing water site to classify water quality

Under the current Regulations, water quality at sites is tested at the point with the most bathers. However, this results in poor spatial resolution of a bathing site’s water quality. There may be significant variation in water quality across a site, for example in a river, the quality will differ if the monitoring is upstream or downstream of a pollution source. Additionally, different water-users may use different parts of the same bathing water, for example sea kayakers will likely go further out from the coast than swimmers. Multiple monitoring points at each bathing water site could provide greater spatial information that will help water-users assess their individual risk.

This could also provide a clearer picture of the water quality at sites, and inform the relevant authority of which area of a bathing water the public may wish to use. However, introducing multiple monitoring points will present additional costs to relevant authorities and increase the complexity of the classification system. There may be confusion for the

public in interpreting additional data, as this will reduce the ability to compare data with the previous single-point sampling system.

Evaluation Questions: Call for Views & Evidence

Q27. To what extent do you agree or disagree that government should pursue wider reform of the Bathing Water Regulations 2013 for England and Wales to include widening the definition of 'bathers'? *(required)*

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Q28. Please indicate a reason for your answer *(not required)*

Q29. Which water users should be included within the definition of 'bather'? *(required)*

- Anglers (fishing)
- Kayakers/Canoeists
- Paddle Boarders
- Paddlers (those in the water but not fully submerged)
- Rowers
- Small boat users
- Surfers
- Swimmers
- Wind Surfers

- Other (please specify)

Q30. To what extent do you agree or disagree that the government should pursue wider reform of the Bathing Water Regulations 2013 for England and Wales to include the use of multiple monitoring points at bathing water sites? *(required)*

- Strongly agree

- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Q31. Please indicate a reason for your answer (*not required*)

Q32. Please provide links to any relevant evidence that you have used to inform your views for this consultation. If there's anything else you'd like us to know or consider please add it here. (*not required*)

We're particularly interested in information around:

- The use of multiple monitoring points
- Widening the definition of bathers at bathing water sites.

7. Additional Considerations

Public Sector Equality Duty

The Public Sector Equality Duty (PSED) came into force in April 2011 (s.149 of the Equality Act 2010) and public authorities are now required, in carrying out their functions, to have due regard to the need to achieve the objectives set out under s149 of the Equality Act 2010. These proposed reforms to the Bathing Water Regulations 2013 do not raise significant issues relevant to the Public Sector Equality Duty because they relate to improving water quality, which will benefit all water users and will not generally affect groups who share a protected characteristic differently. We will continue to consider the Public Sector Equality Duty when drafting new guidance for applications for bathing water designation.

Environmental Principles Policy Statement

The Environment Act 2021, Environment (Wales) Act 2016 and Well-being of Future Generations (Wales) Act 2015 place a duty to have 'due regard' to certain principles and criteria when developing policy. These include improving the environment, economy, society and culture. Defra and the Welsh Government have considered the

impacts of these proposed reforms to the Regulations and will continue to do so as the policy is developed.

Positive impacts include:

- Improvements to water quality, both for human health and the wider environment, through allowing bathing water sites longer to improve.
- Focusing interventions (which could be carbon intensive) on sites where there is a feasible and proportionate route to improvement.
- Introducing the potential to extend the monitoring season at specific sites so that improvements to water quality are not confined to the current bathing season.

Negative impacts could include:

- More interventions which are carbon intensive (for example the installation of UV disinfection at wastewater treatment works) due to sites being given longer to improve or because there is a longer bathing season.
- Applications for bathing water designation being rejected on the grounds of there not being a feasible and proportionate route to improvement.
- Potential disturbance to wildlife and habitats if bathing waters are used more widely outside the current bathing season.

Better Regulation Framework

These proposals have been developed with due regard to the objectives of the Better Regulation Framework, including through a De Minimis Assessment. Both governments recognise that regulation should be applied proportionately, and that there must be sufficient evidence to support regulation being the appropriate approach. We will continue to follow the Better Regulation Framework while making these proposed reforms to the Bathing Water Regulations 2013.

8. Consultation Process

How to respond

Defra and the Welsh Government encourage parties to respond to the consultation via the consultation platform Citizen Space.

In pursuance of our policy of openness and transparency, we will publish nonconfidential versions of responses on our respective webpages. If your response contains any information that you regard as sensitive and that you would not wish to be published, please notify via your response to Q1(Confidentiality) and explain why you regard it as sensitive.

Duration

The consultation will run from 00.01 12 November 2024 to 23:59 23 December 2024.

Contact details

Any queries on the consultation should be directed to bathingwater@defra.gov.uk

Compliance with government consultation principles

In preparing this consultation, Defra and the Welsh Government has taken into account the published government consultation principles, which set out the principles that government departments and other public bodies should adopt when consulting with stakeholders.

Statement about how we use information and personal data that is supplied in consultation responses

Any personal data that you supply in responding to this consultation will be processed by Defra and the Welsh Government, as controllers, in line with data protection legislation.

This legislation is the UK General Data Protection Regulation (GDPR) and the Data Protection Act 2018. 'Personal data' is information which relates to a living individual who may be identifiable from it.

We are processing this personal data for the purposes of our work. This processing is necessary for the performance of our functions and is carried out in the public interest, in order to take consultation responses into account and to ensure that we properly consult on the reforms to the Bathing Waters Regulation 2013.

For more information about how Defra and the Welsh Government processes personal data, your rights in relation to that personal data, how to contact us, details of Defra's Data Protection Officer, and how long we retain personal data, see our Privacy Notice.

Our use of all information and personal data that we receive is also subject to Part 9 of the Enterprise Act 2002. We may wish to refer to comments received in response to this consultation in future publications. In deciding whether to do so, we will have regard to the need for excluding from publication, so far as practicable, any information relating to the private affairs of an individual or any commercial information relating to a business which, if published, might, in our opinion, significantly harm the individual's interests, or, as the case may be, the legitimate business interests of that business.

Please note that information and personal data provided in response to this consultation may be the subject of requests by members of the public under the Freedom of Information Act 2000. In responding to such requests, we will take fully into

consideration any representations made by you in support of confidentiality. We will also be mindful of our responsibilities under the data protection legislation referred to above and under Part 9 of the Enterprise Act 2002.

Further details of Defra's approach to confidentiality can be found online in [Defra's Personal Information Charter](#) and in our programme Privacy Notice.

After the consultation

After the consultation, Defra and the Welsh Government will independently decide whether to proceed with the proposed reforms to the Bathing Waters Regulations 2013, and whether any further changes are necessary.

Defra will publish a formal response to this consultation in good time following the consultation's end.