EXPLANATORY MEMORANDUM TO

THE BATHING WATER (AMENDMENT) (ENGLAND AND WALES) REGULATIONS 2025

2025 No. 1129

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs ("Defra") and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Emma Hardy, Parliamentary Under-Secretary of State (Minister for Water and Flooding) at Defra confirms that this Explanatory Memorandum meets the required standard.

2.2 Lewis Kirk, Team Leader, Bathing Waters and Shellfish Waters at Defra confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 The Bathing Waters Team at Defra can be contacted by email at the following address with any queries regarding the instrument: bathingwater@defra.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument is being made to amend the Bathing Water Regulations 2013 No. 1675 ("the 2013 Regulations"). The 2013 Regulations set out standards for monitoring and classifying the water quality of designated bathing areas in England and Wales, with the purpose of preserving, protecting and improving the quality of the environment and protecting public health. The Environment Agency (EA) in England and Natural Resources Wales (NRW) in Wales are the respective government bodies responsible for monitoring, assessing, and classifying the water quality of designated bathing waters, as well as being responsible for providing the public with information about their cleanliness and any potential pollution risks. Defra and Welsh Government are seeking to reform the 2013 Regulations through three core reforms and several technical amendments in this instrument, to pursue an increase in the designation of safe bathing water sites. The three core reforms seek to address the 'one-size-fits-all' approach the 2013 Regulations take to bathing water designations, water quality monitoring and the de-designation process. The technical amendments listed seek to improve the use of EA and NRW resources and also to bring the 2025 Regulations in line with modern sampling practices. The reforms and technical amendments are explained in more detail in sections 5.1 to 5.11.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

4.4 The Statutory Instrument has different coming into force dates for the different reforms in England. This gives government, businesses, and the public time to prepare for and understand the new law. For the Bathing Water (Amendment) (England and Wales) Regulations 2025 ("the 2025 Regulations"), the coming into force dates are as follows:

4.4.1 For England, regulations 1, 2, 3(a) and (c), 4(b), (c) and (d), and 5 to 12 come into force on 21st November 2025. These regulations represent general provisions, those related to Core Reform 1 (changes to when permanent advice against bathing is issued for waters that have been "poor" for 5 years) and those related to Core Reform 3 (changes to bathing season length). Core reforms are discussed below.

4.4.2 For England, regulation 3(b) and 4(a) come into force on 15th May 2026. These relate to Core Reform 2 (changes to criteria for identification of a bathing water) to enable necessary processes and guidance to be in place for bathing water identification under the new criteria, before provisions come into force.

4.4.3 For Wales, all regulations come into force on 1st April 2026.

5. Policy Context

What is being done and why?

5.1 There have been changes in when, how and where people use bathing waters since the 2013 Regulations were introduced. Regulatory reform is underpinned by a recognition that improving bathing water quality is not only vital for public health and enjoyment but also a cornerstone of thriving coastal communities and ecosystems. The reforms and amendments from the consultation that are delivered through this instrument are detailed below. Defra and Welsh Government also consulted on potential wider reform measures to improve the 2013 Regulations and increase flexibility of the current approach. These are not included in this SI.

5.2 **Core Reform 1: Remove the automatic de-designation provision from the 2013 Regulations.** The first core reform will remove the automatic de-designation provision from the 2013 Regulations. Under the 2013 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. If a bathing water site receives a classification of 'poor' for five consecutive years, it is automatically de-designated as a bathing water, as the EA or NRW must issue permanent advice against bathing. Five years is often too short a time for investments and improvements to be made. Under Core Reform 1, decisions regarding de-designations would instead be taken by Ministers following review and recommendation by the EA and NRW. This is to allow continued monitoring and improvement efforts at sites with potential to improve, rather than automatically removing their designation as bathing waters. This means that if a site has the potential to improve its initial 'poor' classification to 'sufficient' or above, and it is not infeasible or disproportionately expensive to do so, it will not be automatically de-designated after five consecutive years of 'poor' classification. The EA or NRW must instead advise Ministers whether it is feasible and not disproportionately expensive for a site to improve to 'sufficient' standard within a specified period up to five further years, or whether a site should be de-

designated. Ministers will then decide whether to accept that advice. This reform will come into force on **21st November 2025 in England and 1st April 2026 in Wales.**

5.3 **Core Reform 2: Include the feasibility of improving a site's water quality to at least 'sufficient' as a criterion for final designation.** The second core reform is to include the feasibility of improving a site's water quality to at least 'sufficient' as a criterion for final designation as a bathing water. This would avoid poor value for money, by limiting expenditure where water quality improvement is not feasible or would be disproportionately expensive. This reform also aims to ensure that the bathing water is not designated if the Minister has reasonable grounds to believe there is likely to be a significant risk to the physical safety of bathers from the particular features of the water. Nor will waters be designated if Ministers accept advice that a large number of bathers is likely to have a significant impact on environmental protection measures at or near the site. This will allow for more tailored, site-specific decisions that better protect public health and the environment. Before formally identifying a bathing water site, the EA and NRW will work with local authorities to assess the site through a structured triage process. Where necessary, these bodies may allocate additional resources to conduct additional monitoring and a feasibility assessment, ensuring that all relevant criteria are thoroughly considered prior to designation. This reform will come into force on **15th May 2026 in England and 1st April 2026 in Wales**. Applications for designation as a bathing water made in 2025 will be assessed under the existing criteria, whereas applications made on or after 15th May 2026 (leading to designations of new bathing waters for the 2027 general bathing water season onwards) will be considered under the new feasibility, environmental protection and physical safety criteria. This will allow time for guidance on how to submit applications under the new system to be completed and published ahead of the start of the next general bathing season on 15th May 2026, and when applications for designations for the 2027 bathing season open.

5.4 **Core Reform 3: Remove the fixed dates of the monitored bathing season from the 2013 Regulations.** The third and final core reform aims to remove fixed dates for the monitored bathing season from the 2013 Regulations. There will still be a general bathing season in the 2025 Regulations (15th May to 30th September), but Ministers will have the discretion to determine a different bathing season for a site where appropriate. Site specific dates can be set to allow more flexible, locally appropriate bathing seasons and monitoring periods) that reflect when people use the bathing water. This supports better public health messaging and more relevant water quality assessments. Bathers outside of the general season from 15th May to 30th September will also have greater information on water quality at sites where the bathing season is extended. The EA and NRW will be able to safeguard public health and more accurately focus resource to when sites are used. The provisions in this instrument relating to this reform will come into force on **21st November 2025 in England and 1st April 2026 in Wales**. Further detail on how this reform will work in practice be included in published guidance in due course.

5.5 **The technical amendments** seek to improve the use of EA and NRW resources and bring the 2025 Regulations in line with modern sampling practices. Those implemented through this instrument are:

i. Remove the requirement to take a sample to end Short Term Pollution events (STP).

ii. Remove the 7-day time limit in which a replacement sample under STP has to be taken.

iii. Remove the requirement to take a pre-season sample.

iv. Specify 95th percentile z-value to three decimal places, not the current 2 places.

v. Remove requirement to provide the "identity and contact details of any person responsible for taking action over STP" in bathing water profile.

vi. Remove specific requirement to identify sample and paperwork using indelible ink (barcodes and electronic tracking systems are used).

vii. Removing the requirement to replace samples during Abnormal Situations- (Schedule 4 part 1 2.2 (b) of the 2013 Regulations).

5.6 These technical amendments will contribute to improved monitoring and assessment, streamlining and modernising processes and better coordination and data use, for the reasons detailed below for each amendment. All technical amendments will come into force on **21st November 2025 in England and 1st April 2026 in Wales.**

5.7 Multiple technical amendments listed above (i,ii,v) will change practices around short-term pollution events, which can cause rapid and temporary changes in water quality. Delays in lab results mean that post-event sampling often fails to reflect actual conditions, which is why the 2025 Regulations will no longer require a sample to end an STP; instead, expert judgement using appropriate tools and methods will guide decision-making. The proposal to remove the 7-day requirement for taking a replacement sample (so long as the minimum number of samples required for the bathing season are taken where necessary) will allow greater flexibility in scheduling and ensures sampling can occur at the most appropriate time. This amendment will also allow the appropriate agency to take additional samples to replace those disregarded due to STP, where it expects to have the minimum number of samples required for the bathing season at that bathing water.

5.8 Removing the requirement to take a pre-season sample (amendment iii above), will improve representativeness in annual bathing water classifications. Since all sites are already regularly monitored during the general bathing season, taking the additional sample, if required, during that period will improve accuracy and help to maintain public health protection and guidance quality.

5.9 Standardizing all z-values to three decimal places (amendment iv above) for consistency and easier comparison will improve accuracy for sites near classification thresholds and reduce the risk of misclassification. Removing the requirement to identify samples using indelible ink and instead using electronic tracking systems (amendment vi above) aligns the 2025 Regulations with current modern practices.

5.10 Removing the requirement to replace samples during abnormal situations in all cases (amendment vii above) will allow for greater monitoring flexibility as, 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 needed.

5.11 **Additional Information.** Core Reform 1 makes amendments to Reg(13)(2)(a) in the 2013 Regulations so that instead of a site that has received 5 consecutive 'poor' classifications being automatically de-designated, the decision on de-designation is made by the relevant Minister and based on advice from the appropriate agency. This amendment still requires a site to receive 5 consecutive 'poor' classifications. However, Reg 13(2)(b) from the 2013 Regulations which states, *'having consulted the*

local authority that controls the bathing water, the appropriate agency advises the appropriate Minister that it considers that it would be infeasible or disproportionately expensive for the bathing water to achieve a classification of 'sufficient' and the appropriate Minister accepts that advice' is being retained alongside the new provisions under Reg(13)(2)(a) in the 2025 Regulations. Reg13(2)(b) is still necessary in situations where sites may be subject to unforeseen material changes. For example, where a site experiences a relatively sudden and profound change in water quality that means it is no longer feasible or disproportionately expensive for it to reach 'sufficient' standard, it is not appropriate to wait until it has received 5 consecutive 'poor' classifications. This provision under the 2013 Regulations has been used previously where it was technically infeasible to bring a site up to 'sufficient'.

What was the previous policy, how is this different?

5.12 **Core Reform 1:** Remove the automatic de-designation provision from the 2013 Regulations**.** Reg 13(2)(a) of the 2013 Regulations stated that the appropriate agency (in this case EA or NRW) must issue permanent advice against bathing and so de-designate a site as a bathing wate if it was classified as 'poor' for five consecutive years. However, this timeframe often proved too short for meaningful investment and improvement, particularly where water company planning cycles delayed action. Under the 2025 Regulations, the issuing of permanent advice against bathing (and resulting de-designation) will no longer occur automatically following five years of 'poor' classification. Instead, the EA or NRW must advise Ministers whether it is feasible and not disproportionately expensive for a site to improve to 'sufficient' standard within a specified period, or whether it is not, meaning a site will be de-designated.

5.13 **Core Reform 2: Include the feasibility of improving a site's water quality to at least 'sufficient' as a criterion for final designation.** Under the 2013 Regulations, formal consideration of a site's potential to improve water quality—or any physical safety aspects brought to the Ministers' attention or environmental suitability for bathing—was not expressly required prior to identification as a bathing water. Instead, sites were assessed primarily on where the appropriate Minister expected a large number of people to bathe, and having regard in particular to past trends and any infrastructure or facilities provided. The revised approach introduces a feasibility assessment to gauge whether a site can feasibly achieve compliance with the 'sufficient' bathing water standard and provided it is not disproportionately expensive to do so. The changes in the instrument to deliver Core Reform 2 also expressly provide that a surface water must not be identified as a bathing water if a large number of bathers would have a significant impact on the effectiveness of any environmental protection measures at or near the water (for example, measures relating to a Site of Special Scientific Interest). It must also not be identified as a bathing water if Ministers have reasonable grounds to believe that there is likely to be a significant risk to the physical safety of bathers from the features of the surface water. The policy is to ensure particularly unsafe features of the individual site which make it unsuitable for bathing (over and above the intrinsic risks connected with open water bathing at any coastal or inland site) are taken into account in designation, where Ministers have reasonable grounds to believe significant risk is likely. An example of this could be where a weir is in close proximity to the proposed bathing water which is raised as a valid concern during the consultation on designation. These new criteria sit alongside the existing criteria set out in the 2013 Regulations. The reforms ensure that final designations are grounded in practical potential for improvement, taking due account of significant risks and impacts on the environment.

5.14 **Core Reform 3: Remove the fixed dates of the monitored bathing season from the 2013 Regulations.** The 2013 Regulations defined a fixed bathing season as 15th May to 30th September. However, this may not reflect actual usage patterns at sites. The 2025 Regulations enable Ministers to amend the bathing season for individual sites, based on local usage and site-specific factors. This change will allow monitoring periods to better reflect when sites are actually used, supporting more accurate water quality assessments and improving the information available to bathers throughout the year. It will also allow season dates to be tailored to any site-specific factors.

6. Legislative and Legal Context

How has the law changed?

6.1 This Explanatory Memorandum details the proposed revisions to the 2013 Regulations. The instrument is made under section 2 and paragraph 20(1)(b) of Schedule 1 to the Pollution Prevention and Control Act 1999 ("the PPC Act").

Section 2 gives the Secretary of State the power to make regulations for any of the purposes listed in Schedule 1, provided the regulations are for or in connection with the regulation of activities which are capable of causing any environmental pollution, or otherwise for or in connection with preventing or controlling emissions capable of causing such pollution. Paragraph 20(1)(b) of Schedule 1 to the PPC Act contains purposes mentioned in section 2. The purposes include making "provision which, subject to any modifications that the Secretary of State considers appropriate, corresponds or is similar to…

any provision …that might be made by an Act… in connection with the relevant directives" with some exceptions.

Paragraph 20(2)(r) of Schedule 1 to the Act includes EU Directive 2006/7/EC Concerning the Management of Bathing Water Quality as one of the relevant directives (the "EU Bathing Water Directive").

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

Why was this approach taken to change the law?

6.3 Management of bathing water quality, connected with the regulation of activities and emissions that impact on bathing water quality, is a key facet of pollution prevention and control. Section 2 and paragraph 20(1)(b) of Schedule 1 to the PPC Act provide appropriate powers to the Secretary of State to deliver the necessary change and improvement to the environmental regulations (here, the 2013 Regulations). The changes made by the new 2025 Regulations correspond and are similar to provision that may be made by Act in connection with the EU Bathing Water Directive with modifications as considered appropriate. These enabling powers provide the appropriate legal basis for changes and improvements to the 2013 Regulations which implemented the EU Bathing Water Directive.

Why is the change needed now?

6.4 Societal use of these waters is evolving and there are increasing numbers of people using them. The 2013 Regulations need to be updated to protect public health and the environment to reflect this as well as to reflect modern expectations of water quality.

7. Consultation

Summary of consultation outcome and methodology

7.1 Defra and Welsh Government jointly consulted on three core reforms and nine technical amendments to the 2013 Regulations, from 12th November to 23rd December 2024. Two wider reforms that will form part of future phases were also consulted on but are not included in this SI.

7.2 The consultation was open to all, and responses were received via Citizen Space and email. In total, it received 1528 responses across Citizen Space and by email, including individual and campaign responses. Of the responses from Citizen Space and the email templates, this is the split of type of respondent:

- A member of the public with an interest in bathing waters: 81%
- An NGO or other non-profit public interest group: 10%
- A local authority: 4%
- A business that may be impacted by changing bathing water regulations: 2%
- A private landowner with bathing waters or potential bathing water on their land: 2%
- A representative of a water company: 1%
- A farmer or land manager whose land may impact local bathing water quality: <1%
- A trade association: <1%
- A public representative (for example, councillor, MP): 0%

7.3 A dedicated team from Defra and Welsh Government analysed the responses of this consultation. All responses were read through a minimum of two times, once for initial theming and at least once by a different person for quality assurance.

7.4 All core reforms consulted on had a majority of support from respondents. There was positive reception towards updating the bathing waters system, particularly for the proposed reforms on removing automatic de-designation and removing the fixed bathing season dates from the 2013 Regulations. 72% of respondents either agreed or strongly agreed with Core Reform 1 (removing the automatic de-designation provision from the 2013 Regulations), 56% of respondents either agreed or strongly agreed with Core Reform 2 (introducing consideration of feasibility when designating sites) and 70% of respondents either agreed or strongly agreed with Core Reform 3 (removing the fixed dates of the bathing season from the 2013 Regulations). The nine technical amendments proposed received both positive and negative levels of support, however more respondents agreed rather than disagreed with the proposals. 45% of respondents were content with all nine proposed technical amendments, 36% of respondents were not content with all nine proposed technical amendments, with the remaining respondents saying they didn't know.

7.5 Some of the key themes that emerged from the consultation responses included general enthusiasm for modernising the 2013 Regulations, desire for more site-specific flexibility, support for improved monitoring and public health protections. We have and continue to consider these themes in policy development.

7.6 The Government Response[1] to this consultation was published on GOV.UK on 12th March 2025.

8. Applicable Guidance

8.1 This instrument will be implemented by Defra and Welsh Government and in partnership with EA and NRW, working closely with relevant stakeholders and the public. Published guidance will assist members of the public in understanding the impact of reforms to the 2013 Regulations.

8.2 The accompanying guidance to this SI will be published on or before 15th May 2026. This is in line with the date at which changes to the criteria for the identification of bathing waters (Core Reform 2) come into force and the start of the 2026 general bathing season, when new applications for the Secretary of State to consider new bathing water sites for 2027 can be made. This is the date at which all the changes made by this SI will be in force in England.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A De Minimis Assessment is submitted with this Explanatory Memorandum and published on the legislation.gov.uk website. A full Impact Assessment has not been prepared for this instrument because the Equivalent Annual Net Direct Cost to Business (EANDCB) is less than ± £10 million (£6.4m), falling within the limit of a De Minimis Assessment and a minimal level of impact and regulatory burden. The proposal will not materially negatively affect stakeholders (who are broadly in favour of the proposals) the environment, or the economy. A full assessment would not yield additional insights and could delay implementation unnecessarily.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business (including small or micro), charities or voluntary bodies, as in most cases the reforms will involve a continuation of existing processes for businesses that are well understood by stakeholders involved.

9.3 The legislation has no, or no significant, impact on small or micro businesses.

9.4 There is a medium impact on the public sector. Where there is impact from the reforms, there may be added burden on water and sewerage companies. However, where requirements from the reforms have no consequence (such as through changing administrative practices) then there will be no additional burden on water and sewerage companies. The impact on the public sector is formed of cost savings from the prevention of spend on sites which do not pass a feasibility assessment and updated identification criteria (and are thus not identified as designated bathing waters), and efficiencies realised from technical amendments. However, there may be increased resource burden to accommodate extended bathing seasons and extended monitoring regimes. The reforms may result in increased costs to water and sewerage companies, the EA and NRW. Evidence from the EA, OFWAT and water and sewerage companies have been used to complete this assessment.

[1] https://www.gov.uk/government/consultations/reforms-to-the-bathing-water-regulations-2013/outcome/summary-of-responses-and-government-response

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The 2013 Regulations included a Post Implementation Review (PIR) clause (Regulation 20). This clause has been omitted from the 2025 Regulations and accordingly there is no PIR clause included in this SI. The approach to monitoring this legislation will be through monitoring measures alternative to a PIR. Each year Defra and the EA, and Welsh Government and NRW review annual bathing water classifications and assess how the monitoring programme works. This provides scope for tracking how effectively the 2025 Regulations are being implemented and where there are gaps. With regards to the reforms, the annual review also allows both Defra and the EA and Welsh Government and NRW to track how well the reforms have been implemented and whether changes are needed to improve. Defra and Welsh Government are in frequent communication with their respective monitoring bodies. Bathing water policy leads from the devolved nations and Whitehall meet biannually to discuss the 2013 Regulations, monitoring programme and any other areas of relevance, which allows scrutiny and advice to be gathered across the UK. Policy leads in Defra and Welsh Government also engage with stakeholders in multiple sectors, which will be used to gather evidence and feedback on the reforms. Considering the above, evidence will be gathered through BAU practice as well as by targeted commissions and work.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment (SBEE) Act 2015, Emma Hardy, Minister for Defra, has made the following statement:

The 2013 Regulations included a Post-Implementation Review (PIR) Clause at Regulation 20. However, subsequent information in the published statutory guidance for the SBEE Act 2015 describes the two main considerations of when it would, or wouldn't, be appropriate to include a statutory review provision within an SI. These are the financial impacts of the regulations (is there expected to be a significant annualised net impact on business greater than the £10 million de minimis threshold) and contextual factors (are there case-specific factors that suggest that a statutory review clause is appropriate). Since the publication of the guidance, the £10 million De Minimis threshold has been applied from September 2023. Prior to this a lower threshold was in effect at the time the 2013 Regulations were introduced, though the impacts as detailed in the impact assessment produced at the time were negligible and did not have case-specific contextual factors, but included a PIR clause. Based on the published guidance for the SBEE Act 2015, we believe a PIR is not a proportionate method to review the 2025 Regulations as this remains under the current De Minimis threshold of £10 million and we have therefore decided to omit Regulation 20 (the review clause) from the 2025 Regulations through this SI.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").

13.2 The UK transposed the EU Directive 2006/7/EC Concerning the Management of Bathing Water Quality into domestic law through the 2013 Regulations. The enabling powers relied upon to amend the 2013 Regulations are intended to enable change and improvement to the environmental regulations that implemented the relevant directives listed in the enabling Act. This instrument is not related to the withdrawal of the United Kingdom from the European Union.