

Providing Access to Inland Water for Recreational Swimming

Establishing and Developing Safer Facilities in England and Wales

A straightforward guide by the Outdoor Swimming Society



Rutland Water Bathing Beach and Swimming Area July 2014

Executive Summary

Landowners in England and Wales face a lack of clear guidance as to how to allow swimming in open water (rivers, lakes, and reservoirs) on their land. There is no specific legislation that covers this and that, coupled with the fear of civil litigation and criminal prosecution, leads many landowners to forbid swimming. However it is clear that forbidding swimming does not, of itself, absolve landowners from their responsibilities towards visitors on their land and so leads to a lose-lose situation, and that allowing swimming is of benefit to all.

This guide sets out the type of access that can be offered and the relevant pieces of legislation and their impact for both the landowner and the visitor. Following these guidelines will lead to the possibility of opening up suitable open water for swimming in a safe and enjoyable environment for everyone.

It should be noted that this document is not intended as a guide for people or organisations wishing to set up a commercial operation, the requirements for that being rather different.

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Introduction

During warm weather local family friendly inland bathing beaches provide ideal locations for individuals and families to spend a day getting healthy exercise swimming and relaxing by the water. As they are local they don't involve long drives on overcrowded roads to the coast where accommodation is usually expensive and fully booked, especially on hot summer days.

Bathing has little or no impact on the environment and it encourages people, especially children, to spend more time getting healthy exercise because they are having fun – which, in turn, helps to reduce childhood obesity.

Bathing places draw people together, encourage a sense of community and provide opportunity for exercise, sport and relaxation in a fun and safe environment. The water in inland lakes and reservoirs retains its heat and can stay warm into late September. They are often safer and warmer than the sea with no tides, waves or rip currents.

There are many ideal inland beaches but the owners normally enforce a no swimming policy due to a lack of understanding of the legal situation. This leads to people taking risks in less safe waters. The loss of amenity puts English & Welsh families at a disadvantage when compared to citizens in the rest of Europe and North America where safe river, lake & reservoir swimming opportunities remain abundant.

This document and the guidance it contains will dispel the mystery surrounding the legal issues involved and at the same time demonstrate that safe recreational bathing places can, and do, operate successfully today.

The consultation undertaken by the Anglian Water Services Limited in 2011 showed overwhelming support from the public for an inland bathing beach at Rutland Water. This then became part of the development strategy for Rutland Water and it opened in 2014 to overwhelming praise and is now a hugely popular family friendly bathing facility.

In order to encourage land owners (including councils, water park operators and local water supply authorities etc.) to allow outdoor swimming there are options that can be considered with minimal risk.

This guidance is for all owners and occupiers of land on which there is a pond, lake, river or reservoir. This guidance applies to England and Wales and explains existing legislation regarding obligations of landowners and occupiers and the actual risks associated with unsupervised recreational swimming to help address these concerns.



Signage at Rutland Water Bathing Beach

Open water swimming is an adventure sport and the courts generally apply the principle that voluntary acceptance of risks by participants prevents a successful claim against others who have not committed any culpable act.

If a swimmer is injured in an accident it is usually accepted that any claim against the owner or occupier should be defeated by the defence that the injured person willingly accepted the risks (the traditional *Volenti non fit injuria* principle).

Despite this, the OSS understand that every situation is different. This guidance gives general advice to the swimmer and owner or occupier, summarising the key pieces of legislation affecting liability. Definitions used throughout this leaflet are summarised on the back page. Swimmers are, as individuals, responsible for assessing and managing any inherent risks that are ordinarily part of the activity – including unknown depths, unknown underwater obstructions and water quality. Indeed, this is part of the challenge of open water unsupervised recreational swimming. There should be no expectation in a swimmer's mind that an occupier or owner would be responsible or liable for such risks, or for the safety of swimmers on the land.

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Many owners and occupiers of land are happy to give access for unsupervised recreational swimmers but others are reluctant because of perceived and misunderstood concerns over legal liabilities.

Safety

The accident data produced by RoSPA shows that inland open water swimming is one of the very safest aquatic activities. The figures show that it is not quite as safe as indoor swimming but significantly safer than sailing, kayaking, canoeing, angling, jet skiing, and scuba diving. See Figure 3 at:

<http://www.rospa.com/rospaweb/docs/advice-services/leisure-safety/inland-waters-risk-assessment.pdf>

The OSS gives detailed safety advice at:

http://www.outdoorswimmingsociety.com/swimming_outdoors

The Rivers and Lakes Swimming Association (RALSA) have produced an excellent wild swimming safety guide that can be download free at:

<http://www.wild-swimming.com/uploads/WSGsigns.pdf>

With young children, the important issue is for them to be supervised by parents or guardians at all times even if lifeguards are present - Lifeguards are not child minders.

The Outdoor Swimming Society's Participation Statement sets this out clearly and applies to all unsupervised recreational swimmers as follows:

"The Outdoor Swimming Society recognises that open water swimming is an activity with a danger of personal injury or death. Participants in these activities should be aware of and accept these risks and be responsible for their own actions."

The situation regarding formally organised groups under supervision and commercial activity may be different. See publications by the ASA - The Management of Open Water Swimming Events and British Triathlon - Organised Open Water Swimming.

Applicable Legislation

The key pieces of legislation are:

- The Occupiers' Liability Act 1957 (the 1957 Act)
- The Occupiers' Liability Act 1984 (the 1984 Act)
- Health and Safety at Work Act 1974 (HSAW)

The 1957 Act applies to visitors to land, whilst the 1984 Act applies to trespassers. CROW and MCAA apply to persons on open access land and the coastal margin respectively. The HSAW applies only on premises where people are employed.

The Occupiers' Liability Act 1957 (the 1957 Act)

The legislation deals with civil liability, not criminal liability. This means that an occupier cannot be prosecuted under these Acts, but can be sued in the civil courts by an injured party under certain circumstances.

There have been cases when occupiers have been successfully sued for failing to give notice of a hidden hazard which was known – or should have been known – to the occupier. Example is a known underwater hazard within an unfenced aquatic area, accessible to the general public.

Occupiers owe a 'duty of care' to anyone who might be on their land or premises. The extent of this duty varies.

The 1957 Act says occupiers of premises owe a 'common duty of care' to all visitors who come onto land by invitation of the occupier or who are permitted to be there. The duty is to take care over the state of the premises so that visitors will be reasonably safe in using it for the intended or permitted purposes. Under Section 2(2) of the 1957 Act, the duty is "to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there".

However, section 2(5) of the 1957 Act provides that this duty does not impose any obligation on an owner or occupier to a visitor who willingly accepts risks – like the risks encountered by recreational open water swimmers:

"The common duty of care does not impose on an occupier any obligation to a visitor in respect of risks willingly accepted as his by the visitor (the question whether a risk was so accepted to be decided on the same principles as in other cases in which one person owes a duty of care to another)."

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There could however, be an obligation on the occupier to warn of any concealed hazards or dangers not evident to visitors which the occupier knows about.

The Occupiers' Liability Act 1984 (the 1984 Act)

The 1984 Act extends the duty of care to people other than visitors, including trespassers, but only when all of these three conditions are met:

- The owner or occupier knows, or ought to know, of the danger on his or her premises.
- He or she knows or suspects people might come near that danger.
- The risk is one against which he or she might reasonably be expected to offer some protection.

Again, the duty of care does not apply to a person who willingly accepts an obvious risk. In addition, an owner or occupier may discharge the duty by drawing attention to the potential danger and by discouraging people from taking risks. In some cases actions such as the erection of fencing may be appropriate. This is especially important for risks that are known about but which might not be obvious.

Health and Safety at Work Act 1974 (HSAW)

Where a body of water exists on premises that are considered to be places of work, such as farms and country parks where farmhands or wardens may be employed the HSAW act applies. Unlike the 1957 and 1984 acts which codify the duty of care under civil law, the HSAW act has implications under criminal law. The under HSAW the employer will have a duty of care not only to employees but also to visitors to the site.

Section 3 (1) of the Act states that "it shall be the duty of every employer to conduct his undertaking in such a way as to ensure, as far as is reasonably practicable, that persons not in his employment who may also be affected thereby are thereby not exposed to risks to their health and safety".

Other Relevant Acts

The Mines and Quarries Act 1954 has now been repealed apart from section 151, which applies to abandoned mines and quarries. S151 was retained to secure the health and safety of members of the public where these abandoned mineral workings are on publicly accessible land. Health and safety matters at active quarries are covered by the Quarry Regulations 1999. The Quarry Regulations define an active quarry as one which has been worked within the last 12 months. A quarry, whether it is being worked or not, could be deemed by the local authority to be a statutory nuisance because of its accessible nature to the public. That would require an "efficient and properly maintained barrier to prevent persons accidentally falling into it." These duties of owners of mines and quarries are duties to the public and are designed to prevent accidents. They do not affect the common law principle that applies to swimmers and walkers – whether as visitors, as users of open access land or coastal margin, or as trespassers – that the occupier is unlikely to be liable, because unsupervised recreational swimmers accept the risks inherent in their activity.

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Under the Animals Act 1971, if an animal injures someone or causes damage, an occupier may be liable if it was likely to cause that injury or damage unless restrained and the occupier or the person charged with caring for the animal knew this. An occupier does not have to be negligent to be liable under this Act but there is no liability if the damage or injury was wholly the fault of the person suffering it.

Contracting Out Of The Duty Of Care

The Unfair Contract Terms Act 1977 renders unenforceable any attempt to exclude or restrict an owner's or occupier's liability for death or personal injury sustained by a visitor to business premises.

However, liability may be restricted where access is obtained for recreational or educational purposes which are not part of the owner's or occupier's business.

Were a charge for access to be made, an owner or occupier would be considered to be running a business. Any clause trying to absolve the occupier of liability will, therefore, not be effective. Nor can liability be excluded where there is an express contract to enter the land. However, the principle of 'risk willingly accepted' should apply in the case of a swimmer who, having paid an entrance fee, readily accepts the risk associated with swimming. Any landowner charging for access should make it explicit in their terms of entry that this principle applies.

Interpretation of the Legislation

In the past, common interpretation of the legislation relating to the duty of care along with frightening guidance from bodies such as the Health and Safety Executive and ROSPA has led to fear of litigation. However, more recently, the massive surge in the popularity of open water swimming along with the softening of attitudes from safety bodies has brought about the realisation that this fear of litigation was rather overstated as is demonstrated by some important judgements presented below.

The Occupiers' Liability Act 1984 (the 1984 Act)

There have been several cases brought before the Court of Appeals relating to accidents involving swimming and diving.

In *Ratcliff v McConnell* (1999) (<http://www.bailii.org/ew/cases/EWCA/Civ/1997/2679.html>) two students at a college climbed over the gate of the swimming pool for a late night swim whilst the pool was closed. One of the students dived into the pool and sustained serious injuries hitting his head on the bottom. The court states that

36. The relevant danger here was what if someone dived into the pool they might hit their head on the bottom if there was insufficient water to accommodate the dive. That is a danger which is common to all swimming pools. There is no uniformity in shape, size or configuration of swimming pools. It seems to me that it is a danger which is obvious to any adult and indeed to most children who were old enough to have learnt to dive.

And considers that:

45. It is also clear that the question of *volenti non fit injuria* has to be considered at the same time as the question of consideration of the existence of the duty, since if the trespasser willingly accepts the risk as his, there is no duty owed by the occupier (s.1(6) of the 1984 Act).

And therefore:

47. In my judgment it is quite plain that the plaintiff was aware of the risk and willingly accepted it. Accordingly, I would hold that the defendants were under no duty towards him.

In *Darby v National Trust* (2001) (<http://www.bailii.org/ew/cases/EWCA/Civ/2001/189.html>) a visitor to Hardwick Hall tragically drowned in a pond in the gardens. The pond was shallow at the edges but deep in the centre. It was acknowledged that:

5. It is evident that visitors quite frequently swam or paddled in this pond. The defendants must be taken to have known this. They did in fact little to discourage or prevent it. There were no warning notices around or in the vicinity of the pond. There were no life-saving equipment. There was a notice somewhere near an entrance to a car park which stated, among other information about opening hours, charging, fishing tickets, the words "Bathing

and boating not allowed." This was legible but not conspicuous and it was part of other information.

Despite this, the court ruled that:

26. In my judgement the risks to competent swimmers of swimming in this pond from which Mr Darby so unfortunately succumbed were perfectly obvious. There was no relevantly causative special risk of which the National Trust would or should have been aware which was not obvious. One or more notices saying "Danger No Swimming" would have told Mr Darby no more than he already knew.

And:

27. It cannot be the duty of the owner of every stretch of coastline to have notices warning of the dangers of swimming in the sea. If it were so, the coast would have to be littered with notices in places other than those where there are known to be special dangers which are not obvious. The same would apply to all inland lakes and reservoirs. In my judgement there was no duty on the National Trust on the facts of this case to warn against swimming in this pond where the dangers of drowning were no other or greater than those which were quite obvious to any adult such as the unfortunate deceased. That, in my view, applies as much to the risk that a swimmer might get into difficulties from the temperature of the water as to the risk that he might get into difficulties from mud or sludge on the bottom of the pond.

The above cases clearly show that the courts interpret the usual dangers of swimming – drowning from whatever cause and underwater obstructions – to be completely obvious and not subject to any duty of care on behalf of the occupier towards trespassers.

The Occupiers' Liability Act 1957 (the 1957 Act)

The above discussion relates to trespassers. The duty under the 1984 Act was intended to be a lesser duty, as to both incidence and scope, than the duty to a lawful visitor under the 1957 Act.

The landmark case *Tomlinson v. Congleton Borough Council* (2003)

(<http://www.bailii.org/uk/cases/UKHL/2003/47.html>) covers the duty under the 1957 Act.

In this case a young man, a visitor to Brereton Heath Country Park, was hanging out on a sandy beach on the lake in the park when he decided to cool off. He ran into the water and dived. Unfortunately he hit his head on the sandy bottom of the lake and broke his neck. He considered that his injuries were caused by the state of the premises and therefore a duty of care was owed by the occupiers.

The case was initially brought under the 1984 Act because, as the park pursued a policy of forbidding swimming, Mr Tomlinson although initially a visitor became a trespasser when he entered the water to swim. However the House of Lords considered both Acts in their judgement.

In consideration of the cases above, and others, the House of Lords judged that the dangers of the lake were completely obvious and that:

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29. It follows that in my opinion, there was no risk to Mr Tomlinson due to the state of the premises or anything done or omitted upon the premises. That means that there was no risk of a kind which gave rise to a duty under the 1957 or 1984 Acts.

However the court contemplated the matter further because Congleton Borough Council had taken it upon themselves to destroy the beach to make bathing more difficult and unpleasant in the mistaken belief that this was necessary to avoid liability.

45. I think it will be extremely rare for an occupier of land to be under a duty to prevent people from taking risks which are inherent in the activities they freely choose to undertake upon the land. If people want to climb mountains, go hang gliding or swim or dive in ponds or lakes, that is their affair.

47. It is of course understandable that organisations like the Royal Society for the Prevention of Accidents should favour policies which require people to be prevented from taking risks. Their function is to prevent accidents and that is one way of doing so. But they do not have to consider the cost, not only in money but also in deprivation of liberty, which such restrictions entail. The courts will naturally respect the technical expertise of such organisations in drawing attention to what can be done to prevent accidents. But the balance between risk on the one hand and individual autonomy on the other is not a matter of expert opinion. It is a judgment which the courts must make and which in England reflects the individualist values of the common law.

50. My Lords, for these reasons I consider that even if swimming had not been prohibited and the Council had owed a duty under section 2(2) of the 1957, that duty would not have required them to take any steps to prevent Mr Tomlinson from diving or warning him against dangers which were perfectly obvious.

It is therefore clear that there exists no further liability towards visitors than does towards trespassers.

Health and Safety at Work Act 1974 (HSAW)

As well as liability in tort, landowners who are also employers may be liable under criminal law as a result of Section 3 of the 1974 Act. This was the issue faced by the Corporation of London when they were approached by a group of swimmers who wished to swim in the Mixed Pond on Hampstead Heath outside of the normal hours of operation. Advised by their legal team that the Corporation may be liable to prosecution under the 1974 act the Corporation refused permission to the group to swim at these times. The swimmers then sought a judicial review in order to clarify the law.

In *Hampstead Heath Winter Swimming Club v The Corporation of London*

(<http://www.bailii.org/ew/cases/EWHC/Admin/2005/713.html>) the facts of the case were considered along with the judgements of *Tomlinson* and others.

The judgement is lengthy but, in conclusion, Mr Justice Stanley Burnton states that:

68. I stated above that I should consider not only the individual components of section 3 but also the interpretation of the section as a whole. The result of the above analysis is, in my judgment, just and sensible. The swimmers will be under no compulsion or pressure to

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incur the risks involved in self-regulated swimming. They will do so of their own free will. The criminal law respects the individual freedom upheld by the House of Lords in Tomlinson.

69. The Corporation's grant to the Club of permission to swim unsupervised in the Mixed Pond will not of itself render it liable to prosecution under section 3 of the 1974 Act.

How Does The Legislation Apply To Me?

The legislation as described above will apply in different way depending on the type of facility provided. In general these can be defined as:

Unsupervised Access

Providing a Managed Bathing Facility

Unsupervised Access

This is where landowners are not technically providing a bathing facility; instead they are giving safety advice to people who choose to swim.

It is clear from the above discussion that there is no potential for liability for obvious risks however it is sensible to signpost any unusual or hidden dangers at a lake/reservoir/river which are a danger for swimming (such as locks, sluices, weirs, hidden obstructions, sudden change of water depth near the shore). The Environment Agency and many of the National Parks do this and allow people to swim at their own risk.

The definitive text on this area is published by the Visitor Safety in the Countryside Group and is entitled - Managing Visitor Safety in the Countryside. It shows that the fear of liability is far more significant than the actual risk of liability and is recommended reading.

Examples of unsupervised access

The Lake District.

Advice from the Lake District National Park Rangers:

Published on: 18 Jul 2013

As temperatures sizzle to near record breaking heights lakes, tarns and rivers have become popular 'hot' spots to cool-off and swim.

Lake District National Park ranger Sara Spicer said huge numbers were getting a lot of pleasure from the cool waters, adding keeping safe was 'not much more than common sense'.

She explained: "We actively support and promote open water swimming in our world-renowned lakes and tarns. It's a fantastic way to enjoy the summer, scenery and be active into the bargain.

Church Stretton Reservoir.

The National Trust allows swimming in their Church Stretton Reservoir, Shropshire, in accordance with the above guidelines. In addition they have put up signage giving swimming safety advice, a throw line, and buoys marking the 1.4 m depth.

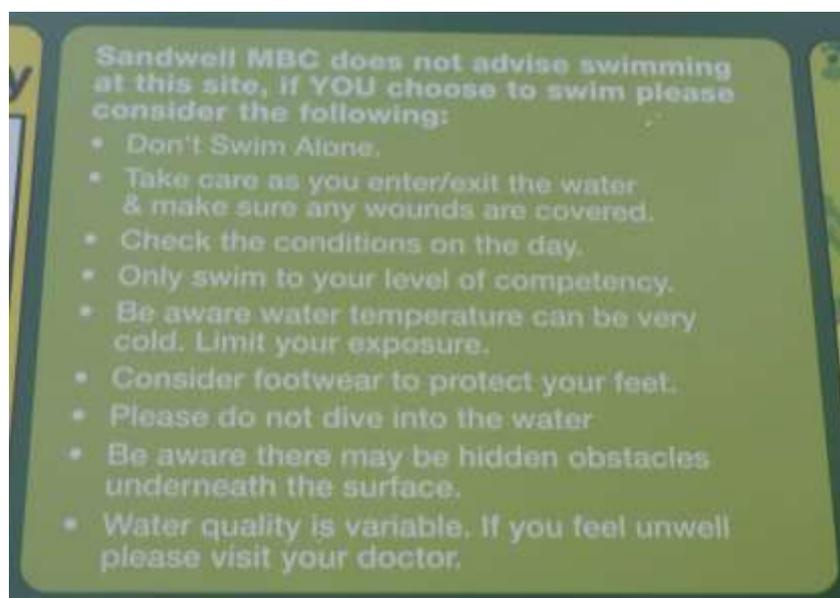


Signage at Church Stretton Reservoir

Swan Pool, West Bromwich, Birmingham.

In 2015 in response to the huge increase in outdoor swimming by the public, Sandwell Council officially allowed non life guarded recreational swimming in Swan Pool, and installed appropriate safety signage.

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Signage at Swan Pool

Providing a Managed Bathing Facility

Provide a buoyed off area of a lake, reservoir, or river for bathing in accordance with HSE guidance document below which sets out the criteria to decide if it should be a. or b, there is also a 3rd alternative c. Note: The examples of Hampstead Heath ponds, Stoney Cove, & Goldenburgh could be considered commercial as they charge for entry.

- a. A non-life guarded facility (such as Frensham Great Pond, Surrey) where water depth is usually restricted to a maximum depth of 1.5 metres.

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- b. A life guarded facility (such as Rutland Water Bathing Beach, Cotswold Water Park & Hampstead Heath Ponds, London).
- c. A non-life guarded facility where swimmers sign a declaration that they are swimming at their own risk and sign on behalf of anyone under 18; such as Stoney Cove or Gildenburgh Water (<http://www.gildenburgh.com/about-gildy/swimming>). This declaration releases the facility operator from all liability and responsibility whatsoever for personal injury, property damage or wrongful death however caused.

The ideal site for a family friendly bathing area could include a gently sloping site into the water with no sudden changes in depth, which allows kids to paddle near the shore, getting deeper further out for older children and adults to swim. As long as the bathing area has a depth of approximately 1.2 metres to 1.5 metres this is deep enough for swimming. This is important so people can have a good swim away from the kids paddling area, and provides interest for all. Sand can be laid along the shore line for kids to play in, with a grassed area behind for people to sit, relax and picnic, with some trees to provide natural shading.

Depending on your risk assessment, it can sometimes be advisable to demarcate the paddling area from the swimming area (especially if the max. depth exceeds 1.5 metres) with a line of buoys, to make it easier to keep young kids and non-swimmers in the shallower paddling area, or have 2 separate bathing areas along the shore line.

At Rutland Water Bathing Beach, the bathing area is 140 metres long and extends out 20 metres to a max. depth of about 6 feet (1.83 metres). The edge of the bathing area is demarcated with a line of buoys in the water. The lifeguards are beach trained and it was determined no demarcation was needed between the paddling and swimming areas. This has worked well in practice.

Rutland Water Bathing Beach cost approximately £20,000 in 2014 for the infrastructure works (creating a sandy beach, signage, etc.) with car parking charges paying for the lifeguarding.

It should be noted, however, that it is important that if lifeguards are provided then it is vital that they properly trained and equipped and appropriate action plans in place. It may increase liability over unsupervised access if only the illusion of safety is provided.

For help with setting up a managed bathing facility similar to Rutland Water Bathing Beach, the land owner (councils, water park operators, local water authorities, etc) can contact RLSS <http://www.rlss.org.uk/> or SLSGB <http://www.sls.gb.org.uk/> who can help with advice incl. details of beach life guard training, risk assessments and operating procedures.

Insurance

Civil & Public Liability Insurance and Employers Liability Insurance would be required for 3 a, b, & c. However a claim on public liability insurance regarding a bathing related accident should never be successful if the HSE and ASA operating procedures & risk assessments for the facility have been followed correctly.

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Water quality

Generally if water looks clear and clean it is usually of good quality. However it is wise, especially if you are providing a bathing facility, to take some initial water samples in line with the bathing water directive, from the proposed bathing area just to make sure the water is suitable, and at regular intervals when the bathing area is open. The bathing beach could be registered as a designated inland bathing water with the Environment Agency by submitting an application to Department for Environment, Food and Rural Affairs. Water testing would then be carried out free of charge by the Environment Agency at specified intervals. Signs on the beach would be regularly updated with the latest water quality results.

Blue green algae can occur during hot weather (a bright green/blue scum on the surface of the water). This is not tested for, you just keep a visual check for it, and advise against swimming while it is present. Some guidance on how to control blue green algae can be found at <http://nora.nerc.ac.uk/19957/1/BarleyStrawtocontrolalgae.pdf>. Weils disease is not tested for, you just provide signage advising people to not go into the water with open cuts, and wash/shower afterwards. It is usually only likely to occur in stagnant water.

Clothing

In addition to trunks or a bathing costume, swim shoes are recommended to protect feet from sharp surfaces. Shorty or full wet suits give buoyancy and warmth. Wearing a brightly coloured swim hat makes you more visible.

HSE guidance and life guarding

The HSE guidance on managing swimming pools including non standard facilities such as lakes & rivers, is:

HSE179 <http://www.hse.gov.uk/pubns/priced/hsg179.pdf> , see specifically paragraphs 6 & 186 to 193.

This is to encourage and not deter operators from opening outdoor swimming facilities.

Frequently Asked Questions are at:

<http://www.hse.gov.uk/entertainment/leisure/faqs.htm> which includes guidance on non-standard swimming facilities, such as lakes and rivers.

This includes guidance for deciding on a life guarded or non life guarded facility, and is a major step forward with a common sense, down to earth approach to water safety.

If the life guarded option is chosen, the RLSS www.lifesavers.org.uk can advise on the number of life guards & supervisors required and undertake a site audit.

The 2 alternative qualifications for inland water life guards are:

1. RLSS NBLQ (National Beach Lifeguard Qualification) with additional site specific training for inland water
2. SLSGB Inland waters lifeguard or their Beach lifeguard with the inland water module in addition.

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The guidance in HSG179 is aimed primarily at swimming pools, but it also covers paddling pools, segregated areas of rivers, lakes and the sea, and other non-standard facilities. “We have prepared this note to clear up any uncertainty over just how the guidance applies to such facilities. We do not want unnecessary precautions to cause people, including children, to miss out on opportunities for fun and healthy exercise”.

Definitions

Below are definitions of several terms which are used throughout this leaflet, drawn from relevant legislation and common law.

Owner: a person who legally owns land.

Occupier: a person who controls land or building(s). On private land the occupier will normally be the owner or tenant. On common land (historical land which has remained largely untouched and which is subject to the rights of other people to graze animals etc.), there may be multiple occupiers.

Premises: includes land and any fixed or moveable structures on it.

Visitor: a person who visits a place by invitation or by right.

Trespasser: a person who enters onto land without permission, invitation or right.

Exercising the statutory right of access: persons making use of the statutory right of access under the Countryside and Rights of Way Act 2000 (CROW) or under the Marine and Coastal Access Act 2009 (MCAA).

Open Access Land: land mapped as such under the Countryside and Rights of Way Act 2000 (CROW).

This includes areas of mountain, moor, heath, down and registered common land, and land dedicated under section 16 of CROW.

Coastal Margin: land mapped as such under the Marine and Coastal Access Act 2009 (MCAA). This includes the establishment of a continuous footpath along England's coastline and a permanent right of access to a coastal margin around the coast.

Rights of Way: a highway which gives the public a right to pass and re-pass any land, including privately owned land (on foot, horse, cycle or other vehicle depending on the way's status). The use of a public right of way may be temporarily or permanently restricted by a Traffic Regulation Order issued by a Highway Authority or a National Park Authority.

Volenti non fit injuria: The principle that if someone willingly and knowingly places themselves in a position where harm might result, they will not be able to bring a claim against another party if suffering injury as a result.

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Please note:

The information in this leaflet is given in good faith to the best of the author's knowledge at the time of writing, and no liability is accepted for use of this information. Whilst every effort has been made to ensure the accuracy of the information presented here, anyone who decides to swim in open water should remember that this is not entirely without risk. Neither the author nor the publishers will be held legally or financially responsible for any accident, injury, loss or inconvenience sustained as a result of the information or advice contained herein.

Whilst every effort has been taken to ensure the accuracy of the information in this leaflet at the date of publication, every situation is different and the information should not be used in place of professional legal advice and the OSS can accept no liability if it is used as such.

Contacts

The Amateur Swimming Association, which is the English national governing body for swimming:

Web: <http://www.swimming.org/asa>

Email: facilities@swimming.org

The Surf Lifesaving Society of Great Britain:

Web: <http://www.slsgb.org.uk>

Email: mail@slsgb.org.uk

The Outdoor Swimming Society can offer general advice regarding access to inland water for outdoor swimming:

Web: <http://www.outdoorswimmingsociety.com>

Email: inlandaccess.oss@gmail.com

The River and Lake Swimming Association

www.river-swimming.co.uk

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