

# Questions and Answers:

## Amendments to R.R.O. 1990, Reg. 565: Public Pools under the *Health Protection and Promotion Act* To Exempt Certain Public Spas

Ministry of Health - October 2022

This is a compilation of questions and answers on Regulation 565 (Public Pools) under the *Health Protection and Promotion Act* (HPPA). It is a living document created by the Ministry of Health and will be updated periodically. It is not intended to be comprehensive. It is also not intended to provide any legal advice. If you have any questions about the application of these regulations, you should consult with a lawyer.

### **Q1: What specific changes have been made to R.R.O. 1990, Reg. 565: Public Pools?**

On October 28, 2022, Regulation 565: Public Pools ("Regulation") under the *Health Protection and Promotion Act* was amended to exempt from the Regulation public spas (hot tubs) that are operated in conjunction with an individual dwelling unit or suite of a hotel<sup>1</sup> for the exclusive use of its occupants if caution signage is posted.

Owner/operators of any exempt hotel spa (i.e., newly, and previously exempt) will be required to post two caution signs, in a conspicuous location in the spa enclosure:

1. The Public Spa Caution Notice outlined in subsection 19.1(1) of the Regulation, indicating:

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<sup>1</sup> For the purposes of the Regulation "hotel" means a hotel, inn, motel, resort or other building or premises operated to provide sleeping accommodation for the public; ("hôtel").

- Children under the age of 12 are not allowed in the spa unless supervised by a person who is 16 years of age or older;
  - Pregnant women and persons with known health or medical conditions should consult with a physician before using the spa;
  - Do not use the spa (hot tub) if you have an open sore or rash, or are experiencing nausea, vomiting or diarrhea;
  - Overexposure may cause fainting. 10 to 15 minutes may be excessive or some individuals. Cool down periodically and leave the spa if nausea or dizziness occurs;
  - Enter and exit the spa slowly, to prevent slipping;
  - Do not play or swim near drains or suction devices. Your body, body parts, hair, jewelry, and other objects may become trapped and cause injury or drowning. People with long hair should be especially careful;
  - Do not enter or remain in the spa if a drain cover or suction fitting is loose, broken or missing. Immediately notify the spa operator.
  - No food or beverage except water is permitted within the deck or spa. No glass containers of any kind are permitted within the deck or spa.
2. A notice to use at your own risk and that the spa is not subject to the Regulation.

Public Health Units will continue to have the authority to follow up on and conduct complaints-based inspections of these public spas (hot tubs) for potential health hazards.

## **Q2: What is considered an exempted public spa?**

The amendment provides an exemption from the Regulation for public spas that are operated in conjunction with an individual dwelling unit or suite of a hotel for the exclusive use of its occupants. For example, this could include an in-suite hot tub or a hot tub on a private balcony/deck of a hotel or motel, etc. This does not include swimming pools.

This amendment will also require owner/operators of public spas in hotels that were previously exempted from the Regulation to also post the Public Spa Caution Notice outlined in subsection 19.1(1) of the Regulation. This would include public spas operated on the premises of a hotel that has fewer than six dwelling units or suites for the use of its guests and their visitors.

## **Q3: When did/do these changes come into effect?**

The amendment comes into effect on October 28, 2022. This timeline gives public spa operators time to prepare for the fall/winter tourism season.

## **Q4: What is required of owner/operators of these public spas (hot tubs) once the amendment comes into effect on October 28, 2022?**

Owner/operators will no longer be required to meet the structural and equipment requirements outlined in the Regulation.

Owner/operators for newly exempted public spas (hot tubs) will be responsible for ensuring that both the use at your own risk and public spas caution notice are posted in a conspicuous location in the public spa (hot tub) area.

Owner/operators of previously exempted hotel spas will be responsible for continuing to post the use at your own risk signage and that the newly required public spas caution notice is posted in a conspicuous location in the public spa (hot tub) area.

All owner/operators will also continue to be responsible for ensuring that the public spa (hot tub) is operated in a safe manner that protects public health for all users.

Owner/operators who are planning to open a new public spa are encouraged to engage with their local Public Health Unit for support and guidance on proper public spa (hot tub) operation and to determine whether the regulation applies to their facility.

While these public spas (hot tubs) will no longer be routinely inspected for compliance with the Regulations, Public Health Units will continue to have the authority to follow up on and conduct complaints-based inspections of these public spas (hot tubs) for potential health hazards. Owner/operators are encouraged to continue to engage with their local public health units for support and guidance on proper public spa (hot tub) operation and maintenance.

Additionally, to support owner/operators to operate their public spas (hot tubs) in a safe manner, the Ministry of Health will be developing a best practice guidance document for the safe operation of public spas.

## **Q5: How will the Public Health Unit become aware of these exempted public spas (hot tubs) to ensure the required caution signage is posted?**

Public Health Units may become aware of these facilities as a result of conducting routine inspections of the hotel/motel's other regulated pools/spas or as a result of complaints or inquiries.

Where possible, Public Health Units may want to proactively reach out to owner/operators of public spas that may be exempt from the regulation to ensure they are aware of the changes.

Public Health Units are not expected to maintain inventories of exempted public spas but should ensure that owner/operators are made aware of the caution signage requirements for exempt public spas upon the Public Health Unit being notified of new facilities opening.

The Ministry of Health expects that Public Health Units will take a collaborative approach to achieving compliance with the new requirements by employing a progressive enforcement approach, focused on raising awareness and education, with owner/operators to ensure that the required caution notices are posted.

Public Health Units are also encouraged to work with owner/operators to support and provide guidance on proper public spa (hot tub) operation and maintenance.

## **Q6: What does “individual dwelling unit or suite” mean? How will Public Inspectors know whether a public spa (hot tub) should be inspected?**

An “individual dwelling unit or suite” should be considered as a single suite or unit at a hotel/motel as defined under the regulation. The public spa (hot tub) should only be used by the occupants of the single designated suite or unit. For example, this could include an in-suite hot tub or a hot tub on a private balcony/deck of a hotel/motel, etc.

A short-term rental cottage/property where the whole unit is being rented to a single party would also be considered an “individual dwelling unit” regardless of the number of bedrooms.

## **Q7: What are the Ontario Building Code requirements for spas exempted under the Public Pools Regulation?**

The Ontario Building Code applies to public spas, as defined in the Regulation, except for spas (hot tubs) operated in conjunction with less than six dwelling units, suites or single-family residences, or any combination of them, for the use of occupants or residents and their visitors.

The changes to the Public Pools Regulations for exempted public spas is not expected to conflict with the Building Code.

## **Q8: How will potential public health risks be mitigated for public spas (hot tubs) that are not subject to the Regulation?**

To mitigate potential public health risks, the amendment requires owner/operators of newly and previously exempted public spas to post caution signage in conspicuous locations in the public spa area to ensure that members of the public are properly informed that the public spa is not subject to the regulations, and they should use at their own risk.

Members of the public are further supported to make informed decisions about the use of the public spa through the additional guidance on the proper use of public spas provided in the required Public Spas Caution Notice sign.

Public Health Units will also continue to have the authority to follow up on and conduct complaints-based inspections of these public spas (hot tubs) for potential health hazards.

The Ministry of Health is also developing implementation tools, including a best practice guidance document, to clarify the exemption and to support owner/operators to continue to operate and maintain their public spas (hot tubs) in a safe manner that protects public health for all users.

## **Q9: What guidance and/or resources will the Ministry of Health be providing to support the changes?**

The Ministry of Health will provide implementation tools, including summary sheet, best practices guidance for operating public spas (hot tubs), and frequently asked questions. These implementation tools will be provided to the Public Health Units to target the business operators, and general public. Updates to the Ontario Public Health Standards documents will also be made accordingly.

The Ministry of Health will provide Public Health Units with information on public health inspections and regulatory enforcement of the newly exempt facilities. Public Health Units will ensure operators of affected facilities post appropriate signage.

## **Q10: When will the guidance and supporting materials be available to operators and Public Health Units?**

Immediately following the implementation of the proposed change, Q&As will be released to assist Public Health Units and operators. These will be updated as needed. Guidance for operating exempted spas is planned to be released in December 2022, following sufficient consultation with stakeholders. Operator training will continue to be encouraged by the Ministry of Health and Public Health Units for all public spa operators, with courses currently available through private companies and/or local Public Health Units.

## **Q11: What happens if a complaint is made to the local Public Health Unit about an exempted public spa (hot tub)?**

Public Health Units will continue to have the authority follow up on and conduct complaints-based inspections of these public spas (hot tubs) for potential health hazards as per their authorities under the *Health Protection and Promotion Act*.

## **Q12: What happens if an issue is observed while a Public Health Inspector is completing a complaints-based inspection of exempted public spas (i.e., no signage, etc.)?**

If an issue is observed at a public spa (hot tub) while a Public Health Inspector is completing a complaints-based inspection, the Public Health Inspector should use a risk-assessment based approach to determine next steps.

Public Health Units are encouraged to work with owner/operators to support and provide guidance on proper public spa (hot tub) operation and maintenance. Some owners/operators may not be aware of the caution signage requirements.

When using a progressive enforcement approach, a Public Health Inspector may consider the applicability of the *Provincial Offences Act*, depending on the context and in consultation with their legal counsel, to lay a provincial offences charge under Schedule 39.

Additionally, Public Health Units will continue to have the authority to follow up on and conduct complaints-based inspections of these public spas (hot tubs) for potential health hazards and Public Health Inspectors may issue Section 13 Orders as per their authorities under the *Health Protection and Promotion Act*.

## **Q13: What authority do boards of health have to ensure the exempted public spas caution notice is (and remains) posted?**

The purpose of the caution signage requirement is to ensure the public is informed that the public spa is not inspected and to make sure they are aware of the risks associated with using the public spa (hot tub).

Owner/operators of any exempt hotel spa (i.e., newly or previously exempt) are required to post two caution signs:

- The Public Spas Caution Notice as outlined in subsection 19.1(1) of the Regulation; and

- A notice to use at your own risk and that the spa is not subject to the Regulation.

A ticket cannot be issued as it is an exemption to the regulation therefore there is no short form wording for this section. However, if the signs are not posted, it would constitute a violation of Reg. 565 (Public Pools) and could lead to a Part III prosecution under the Provincial Offenses Act.

However, the Ministry of Health expects that Public Health Units will take a collaborative approach to achieving compliance with the new requirements by employing a progressive enforcement approach, focused on raising awareness and education, with owner/operators to ensure that the required caution notices are posted.

## **Q14: What if the owner/operator refuses to post the required signage?**

In order to be considered exempt from the Regulation owner/operators of the hotel spa must post both:

- The Public Spas Caution Notice as outlined in subsection 19.1(1) of the Regulation; and
- A notice to use at your own risk and that the spa is not subject to the Regulation.

If the signs are not posted, it would constitute a violation of Reg. 565 (Public Pools) and could lead to a Part III prosecution under the Provincial Offenses Act.

However, the Ministry of Health expects that Public Health Units will take a collaborative approach to achieving compliance with the new requirements by employing a progressive enforcement approach, focused on raising awareness and education, with owner/operators to ensure that the required caution notices are posted.