

Explanatory Memorandum to The Nitrate Pollution Prevention (Wales) (Amendment) Regulations 2019

This Explanatory Memorandum is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Nitrate Pollution Prevention (Wales) (Amendment) Regulations 2019.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs

12 April 2019

PART 1

1. Description

These Regulations amend the Nitrate Pollution Prevention (Wales) Regulations 2013 (S.I. 2013/2506 (W.245)) (“the 2013 Regulations”) relating to monitoring of nitrate pollution and designation of nitrate vulnerable zones and ensure they will continue to be operable in Wales after the UK leaves the EU. The purpose of the instrument is to preserve and protect existing policy, it will not introduce any new policy.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

These Regulations are made under section 2(2) of the European Communities Act 1972 and as the instrument makes minor and technical changes the negative procedure is considered appropriate.

3. Legislative background

The Welsh Ministers are designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to measures relating to water resources and make these Regulations in exercise of the powers conferred by that section.

The current designation process is reliant on section 2(2) of the European Communities Act 1972 which will be repealed once the UK leaves the EU.

4. Purpose and intended effect of the legislation

These Regulations amend the 2013 Regulations. The purpose of these regulations is to prevent nitrates from agricultural sources polluting ground and surface waters and promoting the use of good farming practices.

This instrument makes several minor and technical amendments to deficiencies in the existing legislation described above. It updates the process by which the Welsh Ministers may designate areas as nitrate vulnerable zones. It also introduces a new definition for “new holdings” in light of the new designation process along with providing transitional arrangements for new holdings and further consequential provision including introducing reporting requirements in relation to new holdings.

(1) See S.I. 2001/2555 for the designation conferred on the National Assembly for Wales. By virtue of sections 59 and 162 of, and paragraph 28 of Schedule 11 to, the Government of Wales Act 2006 (c. 32), that designation is now conferred on the Welsh Ministers.

(2) 1972 c. 68; section 2(2) was amended by section 27(1) (a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).

The instrument will ensure that the EU derived law in this area continues to operate effectively in Wales following exiting the EU. By making the proposed statutory instrument, the existing policy regime will be maintained, thereby providing businesses, environmental NGOs and the public with maximum certainty as the UK leaves the EU.

5. Consultation

No public consultation was undertaken. The purpose of the instrument is solely to enable the current legislative and policy framework to remain operable by the withdrawal of the United Kingdom from the European Union.

6. Regulatory Impact Assessment (RIA)

An RIA has not been conducted as the amendments are minor technical changes that are necessary as a result of the UK's withdrawal from the EU. A public consultation was not required because no policy changes are being made via this statutory instrument.

The statutory instrument has no impact on the statutory duties provided in sections 77 -79 GOWA 2006. In addition the statutory instrument has no impact on the statutory partners provided in sections 72-75 GOWA 2006.

As this instrument relates to maintaining existing legislation after EU Exit there is no, or no significant, impact on business, charities or voluntary bodies. There is no, or no significant, impact on the public sector.