

SL(5)409 – The Nitrate Pollution Prevention (Wales) (Amendment) Regulations 2019

Background and Purpose

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.

Regulation 5 amends regulation 7 of the 2013 Regulations to update the process by which the Welsh Ministers may designate areas as nitrate vulnerable zones. The current designation process is reliant on section 2(2) of the European Communities Act 1972 which will be repealed once the United Kingdom leaves the European Union.

Regulation 4 amends regulation 6 of the 2013 Regulations to introduce a definition for “new holding” in light of the new designation process.

Regulation 3 amends regulation 4 of the 2013 Regulation so as to provide transitional arrangements for new holdings.

Regulations 6 to 8 make further consequential provision including introducing reporting requirements in relation to new holdings.

Procedure

Negative

Technical Scrutiny

Two points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 3(b) provides that certain regulations do not apply until *“after the year in which the Welsh Ministers revise or add to the designation of nitrate vulnerable zones under regulation 11(2) [of the 2013 Regulations] so as to include the new holding”*.

Regulation 11(2) of the 2013 Regulations requires the Welsh Ministers to monitor the nitrate concentration in freshwaters; it does not give them power to revise or add to the designation of nitrate vulnerable zones. The correct reference should be to regulation 11(3) of the 2013 Regulations which does give the Welsh Ministers power to revise or add to the designation of nitrate vulnerable zones.

2. Standing order 21.2(v) – that for any particular reason its form or meaning needs further explanation

We question whether it is necessary to insert regulations 36(3) and 37(4) into the 2013 Regulations.

Regulation 3(b) inserts a new regulation 4(2) into the 2013 Regulations. The effect of new regulation 4(2) is to make Parts 3-8 of the 2013 Regulations applicable *“In relation to a new holding”*.



Using regulation 12 of the 2013 Regulations as an example, *"in relation to a new holding...regulations 12 to 22...do not apply until the beginning of the second calendar year after the year in which the Welsh Ministers revise or add to the definition of nitrate vulnerable zones..."*

Regulation 12 provides that *"...the occupier of a holding must ensure that, in any year beginning 1 January, the total amount of nitrogen in livestock manure applied to the holding...does not exceed 170kg multiplied by the area of the holding in hectares."*

On our reading of new regulation 4(2), the reference to 'holding' in regulation 12 of the 2013 Regulations will, in future, include a 'new holding'.

We would be grateful therefore for clarification as to why it is necessary to insert regulations 36(3) and 37(4) into the 2013 Regulations, when the reference to 'holding' in regulations 36(1) and 37(1) should capture a 'new holding' by virtue of new regulation 4(2). In other words, the requirements that apply to new holdings under regulations 36(3) and 37(4) will, it seems, be captured in any case by virtue of new regulation 4(2) and regulations 36(1) and 37(1).

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

After the UK exits the European Union, this instrument will become part of retained EU law.

Government Response

We acknowledge that the references made in regulation 3(b) to "regulation 11(2)" of the Nitrate Pollution Prevention (Wales) Regulations 2013 are incorrect. The correct references should have been to "regulation 11(3)". This is a version control error, and ought to be corrected to avoid misleading readers. We propose to rectify this by means of a correction slip. The correction will replace the references provided in Regulation 3(b) from "regulation 11(2)" to, "regulation 11(3)".

The second reporting point relates to the necessity to insert regulations 36(3) and 37(4) into the 2013 Regulations. Whilst we agree that the reference to 'holding' in regulations 36(1) and 37(1) captures a 'new holding' by virtue of new regulation 4(2) it is our intention to remove any doubt and place a first time obligation to record the matters in the first instance for newly designated holding(s).

Legal Advisers

Constitutional and Legislative Affairs Committee

17 April 2019

