

Explanatory Memorandum to the Bathing Water (Amendment) (Wales) (Coronavirus) Regulations 2020

This Explanatory Memorandum has been prepared by the Department for Economy, Skills and Natural Resources and is laid before the Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Bathing Water (Amendment) (Wales) (Coronavirus) Regulations 2020. I am satisfied that the benefits justify the likely costs.

Lesley Griffiths AM

Minister for Environment, Energy and Rural Affairs

14 May 2020

PART 1

1. Description

The Bathing Water (Amendment) (Wales) (Coronavirus) Regulations 2020 amend the start date of the bathing season in Wales for the year 2020 by amending regulation 4 of the Bathing Water Regulations 2013 (“the 2013 Regulations”). As a result of this amendment the date of the bathing season in Wales for the year 2020 will be 22 June instead of 15 May (as it will remain for each year thereafter), therefore shortening the bathing season in Wales for the year 2020.

The 2013 Regulations implement the Bathing Water Directive 2006/7/EC (“the Directive”). The aim of the Directive is to protect human health by requiring Member States to identify popular bathing waters, monitor their water quality, keep bathers well informed about water quality standards and endeavour over time to achieve good water quality at all identified bathing sites.

This amendment is part of the Welsh Government’s response to the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

Part 3 of this Memorandum explains that these Regulations are made in reliance on section 2(2) of the European Communities Act 1972 (“the 1972 Act”). By virtue of section 59(3) of the Government of Wales Act 2006, the Welsh Ministers are to determine whether an instrument made in exercise of the section 2(2) powers is to be subject to the negative or affirmative procedure.

This statutory instrument is subject to annulment of the Senedd Cymru (negative procedure). The Regulations do not amend any provision of an Assembly Act or Measure. They do not impose obligations of special importance. Accordingly, the Welsh Ministers have determined that these Regulations are to be subject to the negative resolution procedure.

It is considered that in the current public health crisis, the measure given effect by these Regulations should be put in place as a matter of urgency. Consequently, they do not follow the convention that not less than 21 days should elapse between the laying of the Regulations and their coming into force.

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, the Llywydd has been informed that the Regulations will come into force less than 21 days from the date of laying.

3. Legislative background

The instrument applies to Wales only.

These Regulations are made in exercise of the powers conferred by section 2(2) of the 1972 Act. The National Assembly for Wales was designated (for the purpose of section 2(2) of the 1972 Act) in relation to measures relating to water resources by the European Communities (Designation) (No.4) Order 2003/2901. That designation is now a designation of the Welsh Ministers by virtue of sections 59 and 162 of, and paragraph 28 of Schedule 11 to, the Government of Wales Act 2006.

The 1972 Act was repealed by section 1 of the European Union (Withdrawal) Act 2018 (“the 2018 Act”) with effect from exit day. “Exit day” is defined in section 20 of the 2018 Act as 31 January 2020 at 11pm. Despite that repeal the 1972 Act continues to have effect with modifications until IP completion day, by virtue of section 1A of the 2018 Act. Section 1A was inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (“the 2020 Act”). “IP completion day” is defined in section 1A as 31 December 2020 at 11pm (the meaning given in section 39 of the 2020 Act).

4. Purpose and intended effect of the legislation

The purpose of the amendment to the 2013 Regulations is to delay the start date of the bathing season in Wales for the year 2020.

Under Article 3(1) of the Directive, Member States shall annually identify all bathing waters and define the length of the bathing season. Under the Directive “bathing season” means the period during which large numbers of bathers can be expected. “Large numbers” means, in relation to bathers, a number that the competent authority considers to be large having regard, in particular, to past trends or to any infrastructure or facilities provided, or other measures taken, to promote bathing.

This requirement has been transposed under regulation 4 of the 2013 Regulations and the Welsh Ministers (in relation to Wales) have set the bathing season as being between the 15 May and 30 September each year.

Under paragraph 3 of Schedule 4 to the 2013 Regulations National Resources Wales (“NRW”) must:

- (a) take and analyse the first sample for every bathing season shortly before the start of that season; and
- (b) take and analyse samples at intervals not exceeding one month, from every bathing water throughout the bathing water season.

Due to pressures and work prioritisation related to the virus known as “Coronavirus”, NRW are unable to meet their statutory requirement of taking and analysing the first sample prior to the start of the bathing season of 15 May.

This is due to restrictions on public life and availability of NRW laboratory facilities, which has resulted in environmental monitoring and bathing water quality testing being suspended since 23 March 2020.

However, given the importance of the bathing water season in Wales from a public health, economic and social perspective NRW have advised the Welsh Government that they are now able to take steps to prepare appropriate laboratory and staffing levels and undertake the required pre-seasoning sampling if the start date of the bathing season is delayed until 22 June.

It is therefore necessary to amend the 2013 Regulations in order to change the start date of the bathing season in Wales for the year 2020 to 22 June.

The intention of this amendment is twofold. The first intention is to prevent NRW from breaching their statutory sampling duties in relation to bathing waters in Wales under the 2013 Regulations. The second intention is to enable NRW to protect public health by ensuring a sampling programme is in place for the 2020 bathing season (albeit a reduced sampling period) by the earliest operational opportunity.

Additionally, bathing water sampling also has a key role/value in providing the data and subsequent bathing water quality classifications, which enable Local Authorities in Wales to apply for Blue Flag status. This is identified as a key award tool for promoting coastal tourism in Wales and has a positive impact on Wales' economy.

If these amendment Regulations were not to go ahead, the other option would be to cancel the bathing season, which is not recommended because of the potential negative impacts on the Welsh economy and tourism during 2020 and in 2021. Such a cancellation would also have a potential impact on public health due to the absence of bathing water quality information during the whole of the bathing season being made available to members of the public.

5. Consultation

Due to the emergency nature of these Regulations the Welsh Government did not undertake a consultation before the Order came into force.

However, the Welsh Government has been in regular contact with the UK Government and NRW.

6. Regulatory Impact Assessment (RIA)

No Regulatory Impact Assessment (RIA) has been undertaken in relation to these Regulations. This is due to the emergency nature of the Regulations (as outlined in section 4).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations.