

REGULATORY APPRAISAL

ENVIRONMENTAL PROTECTION, WALES

THE AIR QUALITY LIMIT VALUES (WALES) (AMENDMENT) REGULATIONS 2005

Background

1. The importance of fostering increased public participation in environmental decision-making was recognised at the international level in the UN/ECE Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters (the Aarhus Convention), which the Community signed on 25 June 1998 and which has also been signed by the UK. Since signing the Aarhus Convention in 1998, the EU has taken steps to update existing legal provisions in order to meet the requirements of the Aarhus Convention by means of legislation directed to Member States. The main legal instrument used to align Community legislation with the provisions of the Aarhus Convention on public participation is the Directive on public participation (Directive 2003/35/EC).

Purpose and Intended Effect of the Measures

2. The Air Quality Limit Values (Wales) (Amendment) Regulations 2005 transpose into national legislation, by Regulation, the requirements of Directive 2003/35/EC (known as the Directive on Public Participation) by 25 June 2005, in accordance with the Directive's requirements and timetables.
3. The Directive provides for public participation in the preparation of a number of environmental plans and programmes required to be drawn up under several existing environmental directives, in relation to matters such as waste, air quality and protection of waters against nitrate pollution. This Regulatory Appraisal refers only to the transposition of provisions relating to plans and programmes required to be drawn up under Article 8(3) of Directive 96/62/EC on ambient air quality assessment and management.
4. Article 8(3) of Directive 96/62/EC is transposed in Wales by the Air Quality Limit Values (Wales) Regulations 2002.
5. The amending Regulations place the obligation to provide for effective public participation in environmental decision making on the National Assembly for Wales. There is already a package of measures in place to provide for effective public participation in the preparation of such plans and which have the effect of meeting the Directive's obligations to a large extent. However, these Regulations will formalise and strengthen existing practice.

Risk assessment

6. If the UK does not transpose the Directive on time, there is a risk that it will be subject to infraction proceedings by the European Commission.

Options

Do Nothing

7. In respect of this legislation the “Do nothing option” is not an option, as it would ultimately lead to infraction proceedings against the National Assembly for Wales by the European Commission.

Make the legislation

8. The Directive on public participation places an obligation on Member States to ensure that the Directive is transposed by 25 June 2005. In transposing the Directive into national legislation, it is necessary to place an obligation on an individual or organization with the powers to ensure that the Directive’s objectives are met as far as possible.
9. It is for this reason that it is proposed to transpose the Directive into national legislation by means of these amending Regulations under the European Communities Act 1972. These Regulations place the obligation of ensuring public participation in air quality plans and programmes, drawn up in accordance with Article 8(3) of Directive 96/62/EC, on the National Assembly for Wales. The National Assembly for Wales is obliged to meet the requirements of the Directive.

Benefits

Make the legislation

10. Public authorities and other bodies frequently take decisions, which may have a significant effect on the environment, as well as on personal health and well being. Effective public participation in environmental decision-making has several benefits. It enables the public to express, and the decision-maker to take account of, opinions and concerns, which may be relevant to the decisions in question. This increases the accountability and transparency of the decision-making process and contributes to public awareness of environmental issues.

Costs

11. Apart from the administrative costs of making these Regulations, which can be met from within Environment Division's existing budget, there are no financial implications for the Assembly. There are no additional financial implications, industry, business or others in relation to the implementation of these Regulations.

Competition Assessment

12. There are no direct effects on business and therefore no implications for competition.

Consultation

With Stakeholders

13. A full 12 week public consultation was carried out between 1 October 2004 and 5 January 2005, which invited views on the proposal to amend the Air Quality Limit Values (Wales) Regulations 2002, in order to implement Article 2 of Directive 2003/35/EC on public participation in respect of drawing up certain plans and programmes relating to the environment and to include an alternative method for the sampling and measurement of fine particulate concentrations (PM₁₀). A list detailing those organisations consulted can be found at Annex A. A draft Regulatory Appraisal and a set of draft Regulations were included with the consultation document. There was one response, which agreed with the proposals. Therefore, no amendments were made to the Regulations as a result of the consultation exercise.

With Subject Committee

14. The proposed Regulations were notified to the Environment Planning and Countryside Committee on 6 October (paper EPC(2)-09-04(p.4) item No.87). The Regulations were not identified for detailed scrutiny.

Review

15. Article 5 of Directive 2003/35/EC provides that by 25 June 2009, the Commission must send a report on the application and effectiveness of this Directive to the European Parliament and Council. This provision also allows the Commission to review the Directive, taking into account the experiences acquired in the application of the Directive in the Member States.
16. This Article does not impose an obligation on Member States to report to the Commission, but for the Commission to report to the Council and Parliament and for the Commission to review the directive.

Summary

17. The Regulations are necessary in order to transpose the requirements of Directive 2003/35/EC into national legislation and place the legal obligation on the National Assembly for Wales to ensure that measures are in place for providing effective public participation in the preparation, modification and review of certain plans and programmes relating to air quality limit values. There will be no additional cost to industry, r small businesses or any others as a result of the Regulations.

ANNEX A

CONSULTATION LIST

ADAS Pwllpeiran
Friends of the Earth Cymru
Aerospace Wales Forum
All Wales Ethnic Minority Association (AWEMA)
Association of National Park Authorities
Campaign for the Protection of Rural Wales
Health Promotion Library
CBI Wales
Federation of Small Businesses
CECA (Wales) Ltd
Chartered Institute for Environmental Health
Chief Environmental Health Officers Of Local Authorities In Wales
Commission for Racial Equality Wales Office
Country Land & Business Association
Countryside Council for Wales
Department of Earth Sciences
Department of Geography
Disability Rights Commission
Energy and Environment Group, Electricity Association
Engineering Employers Association
Environment Agency Wales
Equal Opportunities Commission
Farmers Union of Wales
Groundwork Wales
House Builders Association
Institute of Biological Sciences
Institute of Directors
Institute of Environmental Science,
Institute of Geography and Earth Sciences
Institute of Grassland and Environmental Research
Mid Wales Partnership
NFU Cymru
North Wales Economic Forum
North Wales Pollution Group
Plaid Cymru
RICS Wales
British Waterways
Royal Commission on Environmental Pollution
RSPB
South East Wales Economic Forum
South Wales Chamber of Commerce & Industry
Chester, Ellesmere Port & North Wales Chamber of Commerce

South West Wales Economic Forum
The Lesbian, Gay, Bisexual Forum
University Hospital of Wales
Valeways
Wales Automotive Forum
Wales Co-operative Centre Ltd
Wales Council for Voluntary Action
Wales Social Partners Unit Ltd
Wales TUC Cymru
Arena Network
Wales Women's National Coalition
Welsh Development Agency
Welsh Development Agency
Welsh Electronics Forum
Welsh Institute of Rural Studies
Welsh Liberal Democrats
Welsh Conservative Party
Welsh Local Government Association
World Trade Centre