

To: Business Committee

From: Carwyn Jones AM
Minister for Environment, Planning and Countryside

EXPLANATORY MEMORANDUM

WATER, ENGLAND AND WALES

THE PROTECTION OF WATER AGAINST AGRICULTURAL NITRATE POLLUTION (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2006

Summary

The intended effect of these Regulations is to transpose Directive 2003/35/EC, the Public Participation Directive, into the action programmes in relation to nitrate vulnerable zones.

1. This Memorandum is submitted to the Assembly's Business Committee in relation to The Protection of Water Against Agricultural Nitrate Pollution (England and Wales) (Amendment) Regulations 2006, in accordance with Standing Order 25 (section 3).
2. A copy of the Instrument is submitted with this Memorandum.

Enabling Powers

3. The power enabling this Instrument to be made is contained in section 2(2) of the European Communities Act 1972. These powers are exercisable jointly by the National Assembly for Wales and by the Secretary of State for Environment, Food and Rural Affairs. The National Assembly for Wales has been designated under section 2(2) of the 1972 Act to make Regulations in relation to matters relating to water resources, by virtue of the European Communities (Designation) (No.4) Order 2003 (SI 2003/2901). Assembly functions in relation to this designation have been delegated to my portfolio as Minister for Environment, Planning and Countryside.
4. Although the National Assembly for Wales has the power to implement this legislation on a Wales only basis, a composite Instrument, with the Secretary of State acting in relation to England and the National Assembly in relation to Wales, has been prepared to deal with this issue as there was initially some concern about the application of the Directive to cross-border watercourses.

Effect

5. The intended effect of these Regulations is to transpose Directive 2003/35/EC, the Public Participation Directive, into the action programmes in relation to nitrate vulnerable zones, by amending The Protection of Water Against Agricultural Nitrate Pollution (England and Wales) Regulations 1996.

6. The EC Public Participation 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.
7. The Public Participation Directive lists a number of environmental plans and programmes for which the public should be provided with the opportunity to participate during their preparation, modification, or review. The Action Programme required by the Nitrates Directive is one of the programmes listed. We are, therefore, required by the Commission to transpose the Public Participation Directive into UK law.
8. The Public Participation Directive applies throughout the United Kingdom. Similar legislation was made in Scotland and Northern Ireland in July 2005.

Target Implementation

9. It is intended that this Instrument be made on 2 May 2006 and laid before Parliament on 10 May 2006, in order to come into force on 1 June 2006. If this legislation is not made in Wales there will be no legislative framework in place to ensure that future action programmes will be consulted upon. However, it is already accepted practice within the Welsh Assembly Government that a consultation will be undertaken for such programmes.

Financial Implications

10. There are no financial implications for the Assembly or others arising from these Regulations.

Regulatory Appraisal

11. As these Regulations fall outside the definition of Assembly subordinate legislation in section 58 of the Government of Wales Act 1998, a Regulatory Appraisal is not required to be undertaken.

Consultation

With Stakeholders

12. There has been no consultation in relation to these Regulations as they simply require the Department for the Environment, Food and Rural Affairs (Defra) and the Welsh Assembly Government to consult in relation to future Action Programmes. These Action Programmes are required to be drawn up as a result of implementing this legislation.

With Subject Committee

13. These Regulations were notified to the Environment, Planning and Countryside Committee, via the list of forthcoming legislation on 1 February 2006 (EPC(2)-02-06(p.3), item no: 14 (CFA144)). The Regulations were not identified for detailed scrutiny.

Recommended Procedure

14. Subject to the views of the Business Committee, I recommend that these Regulations proceed to Plenary under the Standard procedure in order to give Members an opportunity to debate them.

Compliance

15. The proposed legislation will (as far as is applicable):

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998 section 120);
- be compatible with the Assembly's scheme for sustainable development (section 121);
- be compatible with Community law (section 106);
- be compatible with the Assembly's human right's legislation (section 107); and
- be compatible with any international obligations binding the UK Government and the Assembly (section 108).

16. The information in this Memorandum has been cleared with the Directorate of Legal Services and the Assembly Compliance Officer.

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