

Explanatory Memorandum to the Nitrate Pollution Prevention (Wales) (Amendment) Regulations 2010

This Explanatory Memorandum has been prepared by the Department of Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

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 2010. I am satisfied that the benefits outweigh any costs.

Elin Jones

1 March 2010

1. Description

The Nitrate Pollution Prevention (Wales) (Amendment) Regulations 2010 (“the 2010 Regulations”) implement Commission Decision (2009/431/EC) (“the Decision”). The Decision grants a derogation from Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (“the Nitrates Directive”), in relation to the maximum amount of nitrogen from livestock manure that can be applied on individual farms in Nitrate Vulnerable Zones, providing certain conditions are met. The 2010 Regulations also make minor amendments to the Nitrate Pollution Prevention (Wales) Regulations 2008 (SI 2008/3143) (“the 2008 Regulations”) and the Conservation (Natural Habitats, & c.) Regulations 1994.

2. Matters of special interest to the Subordinate Legislation Committee

None

3. Legislative background

This Statutory Instrument will be made under section 2 (2) of the European Communities Act 1972 to implement EC law in relation to the Nitrates Directive by virtue of the designation of the National Assembly for Wales under European Communities (Designation) (No 2) Order 2001 (S.I. 2001/555). By virtue of sections 59 of and paragraphs 28 (1) of schedule 11 to the Government of Wales Act 2006, functions conferred on the National Assembly for Wales by SI 2001/2555 are now exercisable by the Welsh Ministers. This SI is being made under the negative resolution procedure.

4. Purpose & intended effect of the legislation

The Nitrates Directive is an environmental measure that aims to reduce water pollution caused or induced by nitrates from agricultural sources and to prevent such pollution in the future. One of the requirements of the Directive is that, for each farm or livestock unit, the amount of livestock manure applied to the land each year, including by the animals themselves, shall not exceed 170 kg of nitrogen per hectare per year.

The Directive also allows Member States to fix a limit that is higher than 170 kg N/ha provided it can be demonstrated that doing so will not undermine the achievement of the environmental objective of the Directive (or negatively affect the environment more generally). The UK applied for a derogation in January 2009, as it will:

- significantly reduce the costs to the agricultural industry of implementing the Nitrates Directive, and improve the overall cost-effectiveness of the NVZ Action Programme;
- help to avoid potential unintended environmental consequences of the 170 kg/N/ha limit on grassland farms;
- improve the level of environmental protection achieved through the implementation of additional mandatory controls; and
- be implemented on farms located in areas which meet the criteria set out in the Nitrates Directive that must be met for a derogation to be approved.

The Decision allows the application of manure nitrogen from grazing livestock (cattle, sheep, goats, deer and horses) up to a higher limit of 250 kg of nitrogen per hectare per year on an individual farm if the farmer meets the following conditions:

- the farmer must submit an application form in each year they wish to have a derogation;
- at least 80% of the agricultural area available for manure application of the farm must be grassland;
- temporary grassland on sandy soils must only be cultivated in the spring ;
- ploughed grass must be followed with a crop with a high nitrogen requirement;
- livestock manures must not be spread on grassland in the Autumn before it is to be cultivated;
- leguminous or other plants fixing atmospheric nitrogen must not be included in the crop rotation;
- farmers must prepare a fertilisation plan and keep fertiliser accounts.

The Decision also requires the authorities within the UK to:

- apply administrative controls to each farm benefiting from a derogation, including to the annual applications and fertiliser accounts;
- establish additional and reinforced environmental monitoring within areas of the country benefiting from a derogation;

- carry out field inspections at a minimum of 3% of farms benefitting from a derogation;
- submit an annual report to the Commission on the implementation of the derogation.

The derogation expires on 31 December 2012. The Department may seek to extend this agreement for a further four years, but there is no guarantee that future derogations will be granted.

5. Consultation

In 2007 the Department consulted on proposals to implement the Nitrates Directive in Wales, and specifically invited views on whether the UK should apply for a derogation from the whole farm limit for livestock manure. The majority of respondents to this question indicated that it was extremely important to pursue a derogation up to 250kgN/ha. Having to reduce stock numbers, purchasing or renting additional land, the negative effect on crop productivity and the fuel and environmental costs of transporting manures were key reasons given for pursuing a derogation.

The Department has not undertaken a 12 week public consultation on the draft 2010 regulations as we previously consulted on the principle of applying for the derogation. As the Decision was granted, the 2009 regulations will simply implement the Decision, to the benefit of farmers who are now able to take advantage of it. The Department has very little flexibility in implementing the Decision and a 12 week consultation would have significantly delayed implementation and therefore postponed realisation of the benefits.

A stakeholder group (including representatives of the Environment Agency, the National Farmers Union, the Tenant Farmers' Association and other Devolved Administrations) has been fully involved in the process of applying for the derogation and planning for its implementation.

6. Regulatory Impact Assessment

A Regulatory Impact Assessment has not been prepared because it was not deemed necessary as it is expected that there will be no costs and savings to charity and voluntary sectors and negligible costs and savings to the public and private sector. This expectation is based on the figures provided in the Regulatory Impact Assessment accompanying the 2008 regulations (the Nitrate Pollution Prevention (Wales) Regulations 2008). Depending on how affected farmers decided to manage the 170kg N/ha limit the cost to the industry could range from £181k to £1.828m. The purpose of the derogation is to confer a benefit onto farmers by negating these costs.

Based on the experience in Northern Ireland only a quarter of those who could benefit from a derogation applied. This would reduce the range of the cost savings in Wales to between £45k and £460k. When compared to the cost of the agricultural industry in Wales this cost saving is negligible.