

To; Assembly Members
From; Sue Essex AM
Minister for Environment

EXPLANATORY MEMORANDUM

The Surface Waters (Fishlife) (Classification) (Amendment) Regulations 2003

Summary

1. These regulations will amend the Surface Waters (Fishlife) (Classification) Regulations 1997. Regulation 4 of the 1997 Regulations allows for the sampling by the Environment Agency of waters classified under those Regulations to be reduced in frequency or dispensed with in certain circumstances. These Regulations clarify the 1997 provision by setting out the circumstances in which sampling may be reduced or dispensed with. Should those circumstances change, the decision to reduce or discontinue sampling must be revisited.
2. The 1997 Regulations, as amended, and related Directions, transpose EC Directive 78/659/EEC on the quality of fresh waters needing protection and improvement in order to support fish life.
3. The amendment Regulations are being made together with the Department for Environment, Food and Rural Affairs and will cover England and Wales. In accordance with section 3 of Standing Order 23, the Assembly is approving the making of these Regulations in relation to Wales except for those parts which are within the catchment areas of the rivers Dee, Wye and Severn. Under Standing Order 24, the Assembly is also agreeing to the making of the Regulations by the Secretary of State in relation to those parts of Wales within the catchments of the rivers Dee, Wye and Severn.
4. The powers enabling the Regulations to be made are sections 82 and 219(2) of the Water Resources Act 1991. Under the National Assembly for Wales (Transfer of Functions) Order 1999, the functions of the Secretary of State under section 82 have been transferred to the Assembly in relation to Wales, except in relation to the rivers Dee, Wye and Severn catchments: Schedule 2 of the 1999 Order provides that the Secretary of State may only exercise the powers in the Welsh parts of those three catchments with the Assembly's agreement. The functions of the Secretary of State under section 219 of the Water Resources Act 1991 have been transferred to the Assembly but as the Assembly's power to make regulations under section 82 is exercisable in relation to Wales excluding the Dee, Wye and Severn catchments, its power under section 219(2) (i.e. to make provision, in those regulations for the matters listed in section 219(2)) is exercisable to the same extent.
5. A copy of the instrument is with this Memorandum.

Background

6. EC Directive 78/659/EEC on the quality of fresh waters needing protection or improvement in order to support fish life was adopted in July 1978. It requires Member States to designate running or standing freshwaters which support fish or would become capable of doing so if pollution was reduced. It sets standards of water quality for the protection of coarse and game fisheries, together with monitoring requirements. A deficiency in the transposing regulations made in 1997 relating to the suspension of sampling of designated waters has been identified, hence the need for these amendments.

Financial implications

7. Financial Planning Division note the advice that there are no additional financial implications for the Assembly arising from these regulations as it is expected that the costs, if any, of compliance by the Environment Agency, an Assembly Sponsored Public Body, to be marginal and absorbed within existing budgets.

Regulatory Appraisal

8. No regulatory appraisal has been carried out as the Regulations are not Assembly general subordinate legislation and so no regulatory appraisal is required. As described above, the only potential burden to arise from the regulations will fall on the Environment Agency.

Consultation

9. No widespread consultation on these regulations has been carried out but the only organisation they will directly affect, ie the Environment Agency, is aware that they are to be made. Consultation with the Assembly Committees is not required under the relevant Standing Orders.

10. This Memorandum has been cleared with the Office of the Counsel General.

11. The policy division contact is Eve Read, Environmental Protection Division, Ext 3192.