

## **Explanatory Memorandum to the Bathing Water (Amendment) (Wales) Regulations 2014**

This Explanatory Memorandum has been prepared by the Department for Natural Resources & Food and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standard Order 27.1.

### **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) Regulations 2014.

I am satisfied that the benefit outweighs any costs.

**Alun Davies AM**

Minister for Natural Resources and Food

21 April 2014

## **1. Description**

The Bathing Water (Amendment) (Wales) Regulations 2014, amend the Bathing Water Regulations 2013 (S.I. 2013/1675). The amendments will add to the 2013 Regulations two further sites which have been identified as bathing waters in Wales for the 2014 bathing season.

The 2013 Regulations implement Bathing Water Directive 2006/7/EC. 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 and endeavour over time to achieve good water quality at all designated sites.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

Part 3 of this Memorandum explains that these Regulations are made in reliance on section 2(2) of the European Communities Act 1972. 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 Assembly (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.

## **3. Legislative background**

The National Assembly for Wales was designated (for the purpose of section 2(2) of the European Communities Act 1972) 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.

These amendment Regulations are subject to the negative resolution procedure.

There are currently 100 designated bathing waters in Wales, 90 of which are controlled by 12 different local authorities ("LAs"). Ten are privately controlled, by eight different private controllers. Over the last two years the Welsh Government has received a total of 40 applications for bathing water designations with 19 demonstrating the requirements of the Directive for designation. It is expected that this trend will continue.

These amendment Regulations identify two further waters to the list in part 2 of schedule 2 (surface waters in Wales) to the Bathing Water Regulations 2013. Those waters are Llyn Padarn and Rhyl East.

#### **4. Purpose & intended effect of the legislation**

The Bathing Water Regulations 2013 require the Welsh Ministers to annually identify all popular bathing areas, where a large number of people are expected to bathe, having regard, in particular to past trends and any infrastructure or facilities provided, or other measures taken, to promote bathing at those waters.

The Regulations require (amongst other requirements), that the list of surface waters in Wales, which is set out at Part 2, Schedule 2 to the Bathing Water Regulations 2013 is updated to include all newly identified bathing waters in Wales.

For the 2014 bathing season two further sites have been identified as bathing waters i.e. meeting the criteria set out above and therefore, are required to be added to the list of surface waters identified in Wales at Part 2, Schedule 2 to the Bathing Water Regulations 2013. These sites are Llyn Padarn in Gwynedd and Rhyl East in Denbighshire.

All identified bathing waters in Wales are monitored by Natural Resources Wales throughout the bathing season, which in Wales runs from 15 May to 30 September. The bathing water quality results are reported to the European Commission each year and the European Environment Agency publish a summary report on the quality of bathing waters, based on the information provided.

Each year the Welsh Government publishes on its website the bathing water compliance standards for each identified bathing water in Wales.

#### **5. Consultation**

The consultation on the Review of Bathing Waters in Wales 2014 was issued on 7 February and closed on 21 March 2014. The aim of the consultation exercise was to seek views about the Welsh Government's proposal to identify Llyn Padarn and Rhyl East as bathing waters under the Bathing Water Regulations 2013.

The consultation document was sent to a broad range of organisations and individuals, including swimming organisations and community groups.

The Welsh Government received Seventeen responses to the consultation from various groups, organisations and individual members of the public.

A large majority of the respondents agreed with the proposal to identify both Llyn Padarn and Rhyl East as bathing waters for the 2014 bathing season.

Thirteen respondents supported the identification of Llyn Padarn as a bathing water and ten supported the identification of Rhyl East. Three of the respondents objected to the identification of Llyn Padarn as a bathing water.

The Summary of Responses and Welsh Government Response which was issued on 9 April 2014, set out the Welsh Government's role in deciding whether or not to identify a surface water as a bathing water. The Welsh Ministers have to be satisfied that a 'large number' of people bathe at the site. Regulation 3(2) of the Bathing Water Regulations 2013, sets out that the Welsh Ministers must have regard to in particular, past trends and any infrastructure or facilities provided, or other measures taken, to promote bathing at those waters. The Welsh Ministers are under a legal obligation to identify such waters as bathing waters where they are satisfied that this criteria has been met.

Those respondents who objected to the identification of Llyn Padarn as a bathing water raised concerns about water quality, with reference to the presence of algal blooms at the lake in 2009 and the potential risk to swimmers.

Water quality is not a relevant consideration when deciding whether or not to identify a site as a bathing water. However, we did provide detailed information in the summary of responses and Government response to consultation to address the concerns raised.

No objections were received to the identification of Rhyl East as a bathing water.

Those respondents who supported the identification of these sites as bathing waters, identified that given the level of bathing at both sites that designation was a positive development. They also recognised that where sites are added to the list of identified bathing waters, they are then subject to regular assessment and monitoring which is important for public health and the safety of all users.

Respondents also identified the benefit to tourism and the local economy where waters are identified as bathing waters.

Following full consideration of all responses received and evidence provided, the Welsh Ministers are satisfied that both Llyn Padarn and Rhyl East meet the criteria as set out in regulation 3(2) of the Bathing Water Regulations 2013. Therefore, the Welsh Ministers have taken the decision to identify both sites as bathing waters for the 2014 bathing season.

Following this decision Natural Resources Wales will prepare and keep under review bathing water profiles for Llyn Padarn and Rhyl East.

The Welsh Ministers will notify the European Commission of the identified bathing waters.

The Welsh Ministers will amend the Bathing Water Regulations 2013, to reflect these changes.

## **6. Regulatory Impact Assessment**

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies and there is no change to policy.

## **7. Post Implementation Review**

The Bathing Water Regulations 2013 require the Welsh Ministers to annually review their bathing water list. Therefore the current list will be subject to further review in Wales for the bathing season 2015.

## **8. Summary**

These amendment Regulations are concerned with updating the Surface Waters identified in Wales list contained at Part 2, Schedule 2 to the Bathing Water Regulations 2013. This is to take account of the two further identified bathing waters in Wales for the 2014 bathing season.