

## **Explanatory Memorandum to the Nitrate Pollution Prevention (Wales) (Amendment) Regulations 2015**

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

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Nitrate Pollution Prevention Regulations (Wales) (Amendment) Regulations 2015.

Deputy Minister for Farming and Food  
December 2015

## **1. Description**

This instrument amends the Nitrate Pollution Prevention (Wales) Regulations 2013 and the Conservation of Habitats and Species Regulations 2010.

The instrument implements, in Wales, Commission Decision (2013/781/EU) (“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.

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

The Regulations are to be made pursuant to section 2(2) of the European Communities Act 1972 (ECA). The ECA allows for a choice of procedure pursuant to which the Regulations are to be made. It is appropriate to adopt the negative procedure as the discretion of the Welsh Ministers over the content of the subordinate legislation is limited given that we are transposing an EU law obligation.

## **3. Legislative background**

Section 59 of the Government of Wales Act 2006 (GOWA) enables Welsh Ministers to be designated for the purposes of section 2 (2) of the European Communities Act 1972 (the ECA 1972).

Section 2 (2) of the ECA 1972 enables designated Ministers or departments to implement EU obligations and rights.

Article 3 of European Communities (Designation) (No 2) Order 2001 designates the National Assembly for the purposes of section 2(2) of the ECA 1972 in relation to the protection of waters against pollution caused by nitrates from agricultural sources .

Article 3 of European Communities (Designation) Order 2002 designates the National Assembly for the purposes of section 2(2) of the ECA 1972 in relation to the conservation of natural habitats and of wild fauna and flora

By virtue of sections 59 (1) and 162 of and paragraphs 28 and 30 of schedule 11 to the Government of Wales Act 2006, functions conferred on the National Assembly for Wales by the designations orders above are now exercisable by the Welsh Ministers.

## **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 procedure, pursuant to paragraph 2 of annex III of the Directive, enables A Member State to formally request a derogation from the Commission. On the 14<sup>th</sup> January 2009 the United Kingdom requested a derogation which was granted on the 29<sup>th</sup> May 2009 (2009/431/EC). The derogation expired on 31<sup>st</sup> December 2012 and prior to expiry a renewal was requested as it would continue to:

- 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.

Decision (2013/781/EU) grants a further derogation which 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 a number of conditions, including:

- the farmer must submit an application form in each year they wish to have a derogation;
- at least 80% of the agricultural area of the farm must be grassland;
- temporary grassland on sandy soils must only be cultivated in 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 derogation (2013/781/EU) was granted on 18 December 2013 and expires on 31 December 2016.

## **5. Consultation**

In December 2011 the Welsh Government consulted upon the proposal to seek a renewal of the derogation issued in May 2009 by the European Commission, which expired 31 December 2012. Following consultation the then Minister for the Environment and Sustainability and Deputy Minister for Agriculture, Food, Fisheries and European Programmes agreed to pursue the renewal of the derogation for 2013-2016. These Regulations implement the resulting derogation

## **6. Regulatory Impact Assessment (RIA)**

No Regulatory Impact Assessment was carried out for these regulations as the administrative cost to the industry of operating derogations and the environmental costs are negligible.

The legislation has no impact on the statutory duties (sections 77 -79 GOWA 06) or statutory partners (sections 72-75 GOWA 06).