

Explanatory Memorandum to the Bathing Water (Amendment) (Wales) Regulations 2016

This Explanatory Memorandum has been prepared by the Department for Economy, Skills and 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 Bathing Water (Amendment) (Wales) Regulations 2016.

Carl Sargent AM

Minister for Natural Resources

9 March 2016

1. Description

These amendment Regulations will add to the Bathing Water Regulations 2013 (2013 Regulations) (S.I. 2013/1675), one further designated beach in Wales which has been identified as a bathing water for the 2016 bathing season. The inclusion of this beach (Aberdyfi Rural Beach) to the Regulations will put in place a water quality monitoring and recording regime and require this information to be reported to the European Commission each year.

The 2013 Regulations implement the 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 standards and endeavour over time to achieve good water quality at all designated bathing 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 ("the 1972 Act"). 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

These Regulations are made in exercise of the powers conferred by section 2(2) of the 1972 Act. The National Assembly for Wales was designated (for the purpose of section 2(2) of the 1972 Act) 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. These amendment Regulations identify one further water to be added to the list in Part 2 of Schedule 2 (surface waters in Wales) to the 2013 Regulations.

4. Purpose & intended effect of the legislation

There are currently 102 designated bathing waters in Wales. Over the last 2 years the Welsh Government has received a total of 3 applications for bathing water designations with all 3 meeting the requirements of the Bathing Water Directive 2006/7/EC for designation.

The 2013 Regulations 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 things), that the list of surface waters in Wales, which is set out at Part 2, Schedule 2 to the 2013 Regulations is updated to include all newly identified bathing waters in Wales.

For the 2016 bathing season one further site has been identified as a bathing water i.e. meeting the criteria set out above and, therefore, is required to be added to the list of surface waters identified in Wales at Part 2, Schedule 2 to the Bathing Water Regulations 2013.

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 the bathing water compliance standards for each identified bathing water in Wales on its website.

5. Consultation

The consultation on the Review of Bathing Waters in Wales 2016 was issued on 15 January and closed on 26 February 2016. The aim of the consultation exercise was to seek views about the Welsh Government's proposal to identify Aberdyfi Rural Beach as a bathing water under the Bathing Water Regulations 2013.

The consultation document was sent to a broad range of organisations and representative bodies, including outdoor swimming organisations, Local Authorities and children and community representative bodies.

The Welsh Government received three responses to the consultation from the Marine Conservation Society, Southern Snowdonia Local Access Forum and the Water Health Partnership for Wales Bathing Water Group. Information was also requested and provided by Natural Resources Wales and Dŵr Cymru Welsh Water as part of the consultation process.

All the responses received supported our proposal to designate a further bathing water for the 2016 bathing season. No objections were received.

One response stated that they supported the designation of all appropriate waters used by bathers, identifying the importance of good quality bathing water for protecting public health, contributing to tourism and to the economy and for protecting the marine environment. One respondent also called for the provision

of suitable toilet facilities to be provided at sites designated as bathing waters (such provision usually being a matter for Local Authorities).

The Summary of Responses and Welsh Government Response to the consultation 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, in particular, have regard to 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.

Following full consideration of all responses received and evidence provided, the Welsh Ministers are satisfied that Aberdyfi Rural Beach meets 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 this site as a bathing water for the 2016 bathing season.

Following this decision Natural Resources Wales will prepare and keep under review a bathing water profile for this site.

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

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 amendment instrument as it imposes no costs or savings (or negligible costs or savings) on the public, private or third sectors. The amendment Regulations do not create any policy change, but seek to amend Part 2, Schedule 2, of the 2013 Regulations by adding one additional designated bathing water to the current list of designated bathing waters in Wales.

7. Post Implementation Review

The 2013 Regulations 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 2017.

8. Summary

These amendment Regulations are required to update the list of surface waters identified in Part 2, Schedule 2 to the Bathing Water Regulations 2013. This is to take account of one further bathing water in Wales identified for the 2016 bathing season. Following the inclusion of Aberdyfi Rural Beach to the list it will be subject to bathing water quality monitoring by Natural Resources Wales during

the bathing season and that water quality information will be reported to the European Commission each year along with the other identified bathing waters in Wales.