

Welsh Statutory Instrument 2002 No. 2297 (W.226)

The Protection of Water Against Agricultural Nitrate Pollution (Amendment) (Wales) Regulations 2002

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STATUTORY INSTRUMENTS

2002 No. 2297 (W.226)

WATER, WALES

The Protection of Water Against Agricultural Nitrate Pollution (Amendment) (Wales) Regulations 2002

Made

5th September 2002

Coming into force

11th September 2002

The National Assembly for Wales ("the National Assembly"), which has been designated^[1] for the purposes of section 2(2) of the European Communities Act 1972^[2] in relation to measures relating to the protection of waters against pollution caused by nitrates from agricultural sources, in exercise of the powers conferred upon the National Assembly by that section, hereby makes the following Regulations:

Citation, commencement, application and interpretation

1. - (1) These Regulations may be cited as the Protection of Water Against Agricultural Nitrate Pollution (Amendment) (Wales) Regulations 2002 and come into force on 11th September 2002.

(2) These Regulations apply to Wales.

(3) In these Regulations, "the Principal Regulations" means the Protection of Water Against Nitrate Pollution (England and Wales) Regulations 1996^[3].

Amendment to the Principal Regulations

2. The Principal Regulations are amended in accordance with the Schedule to these Regulations.

Saving

3. These Regulations do not affect anything done under or in reliance upon the Principal Regulations prior to the amendments made by these Regulations taking effect.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998^[4]

Mike German

Deputy First Minister, Minister for Rural Development and Wales Abroad.

5th September 2002

SCHEDULE

Regulation 2

The following amendments are made to the Principal Regulations:

1. In Regulation 2 -

(a) after the definition of "chemical fertiliser", insert: " "designation" means, in relation to land in Wales, the inclusion of that land in an area defined as a nitrate vulnerable zone by regulation 3B(1). "

(b) after the definition of "groundwater", insert:

" "interest", in relation to land, means -

(a) a fee simple absolute in possession;

(b) a term of years absolute of which not less than one year remains unexpired;
or

(c) a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 or a tenancy under the Agricultural Holdings Act 1986."

(c) after the definition of "livestock manure", insert: "National Assembly means the National Assembly for Wales."

(d) after "regulation 3" in the definition of "nitrate vulnerable zone", insert: "or, where the nitrate vulnerable zone is situated in Wales, regulation 3B".

(e) in paragraph (a) of the definition of "the relevant Minister", delete: "or which are partly in England and partly in Wales,".

(f) for paragraph (b) of the definition of "the relevant Minister", substitute: "(b) in relation to land in Wales, means the National Assembly;".

2. In regulation 3(1), delete: "and the Secretary of State for Wales" and "and Wales".
3. Insert, after regulation 3(2): "(3) Paragraphs (1) and (2) do not apply to Wales.".
4. Insert, after regulation 3 -

" Provisions in relation to Wales

3A. Regulations 3B, 3C and 3D apply only in relation to Wales.

Designation of nitrate vulnerable zones in Wales

3B. - (1) In these Regulations as they apply to Wales, "nitrate vulnerable zone" means, subject to regulation 3D, any of the areas referred to in Schedule 1A and more particularly shown coloured blue or pink on the maps contained in the volume of maps marked "Volume of Maps of Nitrate Vulnerable Zones S.I. 1996 No. 888 (2002 revision)" and deposited at the offices of the National Assembly, Cathays Park, Cardiff, being all known areas of land in Wales which drain into and contribute to pollution of the waters which the National Assembly has identified, in accordance with the criteria set out in Schedule 2, whether those waters are located wholly in Wales or not, as waters affected by pollution and waters which could be affected by pollution if action pursuant to regulation 6 were not taken.

(2) The National Assembly must, by 1st August 2006 and at intervals of no more than four years thereafter, review and if necessary revise or add to the designation of nitrate vulnerable zones to take into account changes and factors unforeseen at the time of the previous designation.

Publicity for designation of new nitrate vulnerable zones in Wales

3C. - (1) The National Assembly must, as soon as practicable, publish, in accordance with paragraph (3), a notice, in relation to each nitrate vulnerable zone shown coloured pink on the maps referred to in regulation 3B(1):

- (a) specifying the name of the nitrate vulnerable zone to which it relates;
- (b) giving particulars of the means by which a copy of the map relating to that zone may be inspected;
- (c) stating that the nitrate vulnerable zone to which it relates has been designated under the provisions of these Regulations;
- (d) stating that the effect of the designation of an area as a nitrate vulnerable zone is to require the establishment of an action programme in relation to that area in accordance with regulation 6 of these Regulations;
- (e) stating that any person who has an interest in any land included within the zone to which the notice relates may, by giving notice in writing to the National Assembly at such address as the notice may specify, to be received no later than the expiry of three months from the date of publication of the notice, require the National Assembly to carry out a mandatory reassessment of the inclusion of that land in the zone in accordance with regulation 3D.

- (2) A notice published pursuant to paragraph (1) may relate to more than one

nitrate vulnerable zone.

(3) A notice published pursuant to paragraph (1) must:

- (a) if it relates to one nitrate vulnerable zone, be published in at least one daily newspaper circulating in that part of Wales in which the nitrate vulnerable zone to which it relates is situated;
- (b) if it relates to more than one nitrate vulnerable zone, be published in daily newspapers which, taken together, circulate in all parts of Wales in which the nitrate vulnerable zones to which it relates are situated;
- (c) be sent, together with a copy of the map relating to each nitrate vulnerable zone to which it relates, to each of the bodies referred to in Schedule 1B and, in relation to any local authority to which it is sent, be deposited with the chief officer of that authority in accordance with section 225 of the Local Government Act 1972.

Mandatory reassessment of new nitrate vulnerable zones in Wales

3D. - (1) The National Assembly must, if it receives from a person who has an interest in any land referred to in regulation 3C(1)(e), before the expiry of the period referred to in that sub-paragraph, notice requiring a mandatory reassessment of the inclusion of that land in the nitrate vulnerable zone, carry out such a reassessment in accordance with this regulation.

(2) Before carrying out such a reassessment the National Assembly must invite the person who required the reassessment and the Agency, and may invite any other person who appears to the National Assembly to have a sufficient interest in the subject-matter of the reassessment, to make representations in writing as to whether the land in question should be included in the zone and must afford the Agency and the person who required the reassessment a reasonable opportunity to comment on their respective representations and, where the National Assembly regards it as appropriate, on those of any other persons and may, if the National Assembly regards it as appropriate to do so, afford such other persons a reasonable opportunity to comment on the representations made by the Agency and the person who required the reassessment.

(3) The National Assembly must, having considered the representations made in accordance with paragraph (2), determine whether or not to revise the nitrate vulnerable zone by excluding, in whole or in part, the land to which the reassessment relates and such other land as it considers appropriate and must, having made such determination, give written notice of its determination, stating its reasons for that determination to all persons who made representations pursuant to paragraph (2).

(4) Where the National Assembly determines, in accordance with paragraph (3), to revise a nitrate vulnerable zone, it must:

- (a) subject to paragraph (5), prepare a revised map of the zone as amended in accordance with that determination and replace the map referred to in regulation 3B(1) with that revised map;
- (b) publish notice that the map has been revised, stating the general effect of that revision, in at least one daily newspaper circulating in that part of Wales in which the zone is situated; and

(c) send a copy of that notice, together with a copy of the revised map, to each of the bodies to whom a copy of the map was sent under regulation 3C(3)(c).

(5) Where, by reason of one or more notices requiring a mandatory reassessment, the National Assembly is required to reassess whether there should be included within a nitrate vulnerable zone land which, taken together, constitutes the whole of that zone and the effect of the determinations made by the National Assembly in relation to that notice or those notices is that the whole of the land included within that zone should be excluded from it, the National Assembly must, instead of the obligation imposed by paragraph (4)(a), prepare and place in the volume of maps referred to in regulation 3B(1), in place of the map relating to that zone, a statement that the zone has been deleted.

(6) Where, under this regulation, the National Assembly determines that land should not be included in a nitrate vulnerable zone, then, from the date on which it gives notice of that determination under paragraph (3), the provisions of these Regulations are not to apply to that land."

5. In Regulation 6(3)(a), after "regulation 3(1)", add: "or such zone as is shown coloured blue on the maps referred to in regulation 3B(1),".

6. In Regulation 6(3)(b), after "regulation 3(2)", add: "or regulation 3B(1) or (2) (other than a zone shown coloured blue on the maps referred to in regulation 3B(1))".

7. In Schedule 1, delete from the list of nitrate vulnerable zones: "Dyserth" and "Trelech".

8. Add, after Schedule 1 -

" SCHEDULE 1A

Regulation 3B(1)

North West Clwyd

Dyserth

Holywell

Central Clwyd

Wrexham, Alyn & Deeside

South East Clwyd

Bishops Castle (Wales)

Lady Park Wood Monmouth

Trelech

Great Spring (Monmouthshire)

SCHEDULE 1B

Regulation 3C(3)(c)

The Environment Agency

The National Farmers' Union

The Farmers' Union of Wales

The Country Land and Business Association

Every County or County Borough Council within whose area any part of the nitrate vulnerable zone is situated."

9. In Schedule 2, substitute for "Regulation 3(1)", wherever it occurs: "regulations 3(1) and 3B(1)".

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which amend, in relation to Wales, the Protection of Water Against Agricultural Nitrate Pollution (England and Wales) Regulations 1996 (S.I. 1996/888), ("the Principal Regulations"), make further provision relating to the implementation of Council Directive 91/676/EEC, concerning the protection of waters against pollution caused by nitrates from agricultural sources.

Regulation 3 of, and Schedule 1 to the Principal Regulations identified as nitrate vulnerable zones certain areas of land in England and Wales, including two zones (the Dyserth and Trelech zones) in Wales.

The amendments made by these Regulations designate further areas in Wales as nitrate vulnerable zones. The new regulation 3B and Schedule 1A, introduced into the Principal Regulations by these Regulations, designate as nitrate vulnerable zones those further areas, together with the areas already within designated zones in Wales. The new regulation 3C and Schedule 1B require the National Assembly for Wales ("the National Assembly") to publish a notice in the press of the designation of new nitrate vulnerable zones and to deposit a copy of the map showing those zones with the relevant local authority and also to provide a copy to certain bodies representing interests which may be affected by the designation. The new regulation 3B(2) places a duty on the National Assembly to review and if necessary revise or add to the areas designated as nitrate vulnerable zones in Wales, at least every four years.

The new Regulation 3D enables any person who has an interest in land designated under the amended Regulations (and which was not already designated) to require a mandatory re-assessment by the National Assembly of the inclusion of that land in the zone.

There are a number of minor amendments to the Principal Regulations, as they apply to Wales.

Regulation 3 of these Regulations provides that the amendments to the Principal Regulations are not to affect anything done under or in reliance on the Principal Regulations

prior to those amendments taking effect.

Notes:

[1] See Article 3 of, and Schedule 2, paragraph 2, to the European Communities (Designation) (No. 2) Order 2001 (S.I. 2001/2555).[back](#)

[2] 1972 c.68.[back](#)

[3] S.I. 1996/888. Amendments have been made by S.I. 1997/2971 and S.I. 1998/1202.[back](#)

[4] 1998 c.38.[back](#)

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