

Explanatory Memorandum to the Bathing Water (Amendment) (Wales) Regulations 2017

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 2017.

Jane Hutt AM

Leader of the House and Chief Whip

23 March 2017

1. Description

These amendment Regulations will add to the Bathing Water Regulations 2013 (2013 Regulations) (S.I. 2013/1675), one further beach in Wales which has been identified as a bathing water from the 2017 bathing season. The inclusion of this beach (Traeth Glan Don Beach) to the 2013 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 Directive”). 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 identified 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

The instrument applies to Wales only.

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 bathing 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 103 identified bathing waters in Wales. Over the last two years the Welsh Government has received a total of two applications for surface waters to be identified as bathing waters with both meeting the requirements of the Directive.

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.

For the 2017 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 2013 Regulations.

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 identified 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:
<http://gov.wales/topics/environmentcountryside/epq/waterflooding/bathing-water-quality-and-beaches/?lang=en>

The consultation on the Review of Bathing Waters in Wales 2017 was issued on 20 December and closed on 15 February 2017. The aim of the consultation exercise was to seek views about the Welsh Government's proposal to identify Traeth Glan Don Beach as a bathing water under the 2013 Regulations.

The consultation document was sent to a broad range of organisations and representative bodies, including outdoor swimming organisations and business and community groups in the area of the bathing water.

The Welsh Government received six responses to the consultation. 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 identify a further bathing water for the 2017 bathing season.

Respondents highlighted the fact that Traeth Glan Don Beach is used for a variety of activities including bathing. Support for the beach to be identified as a bathing water highlighted the importance of good bathing water quality for protecting public health and the contribution this can make to tourism and the

economy in Wales. It was also seen as contributing positively to the marine environment.

It was recognised that the identification of this area as a bathing water would provide a Regulatory framework for monitoring of the water's quality, for ensuring that information on potential sources of pollution is made available to the public and for making any improvements necessary.

One response called for all coastal areas used for bathing in Wales to be identified as bathing waters. In response to this comment we have set out in the Summary of Responses that anyone can recommend an area used for bathing for consideration.

The Summary of Responses and Welsh Government Response to the consultation sets out the Welsh Minister'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 2013 Regulations, 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 Traeth Glan Don Beach meets the criteria as set out in regulation 3(2) of the 2013 Regulations. Therefore, the Welsh Ministers have taken the decision to identify this site as a bathing water. Please find below a link to the consultation:

<https://consultations.gov.wales/consultations/bathing-water-review-wales-2017>

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

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

The Welsh Government will amend the 2013 Regulations, to reflect these changes.

5. 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 bathing water to the current list of identified bathing waters in Wales.

6. 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 a further review in Wales for the bathing season 2018.

7. Summary

These amendment Regulations are required to update the list of surface waters identified in Part 2, Schedule 2 to the 2013 Regulations. This is to take account of one further identified bathing water in Wales for the 2017 bathing season. Following the inclusion of Traeth Glan Don 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.