WELSH STATUTORY INSTRUMENTS

2012 No. 1238 (W.151)

AGRICULTURE, WALES
WATER, WALES

The Nitrate Pollution Prevention (Wales) (Amendment) Regulations 2012

Made - - - -	*5 May 2012*
Laid before the National Assembly for Wales - -	*9 May 2012*
Coming into force - -	*1 June 2012*

The Welsh Ministers are designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to matters relating to the protection of waters against pollution caused by nitrates from agricultural sources. In exercise of the powers conferred upon them by that section, the Welsh Ministers make the following Regulations:

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Nitrate Pollution Prevention (Wales) (Amendment) Regulations 2012 and they come into force on 1 June 2012.

(2) These Regulations apply in relation to Wales.

(3) In these Regulations, "the principal Regulations" means the Nitrate Pollution Prevention (Wales) Regulations 2008(**3**).

Substitution for regulation 2

2. For regulation 2 (application) of the principal Regulations, substitute—

"**Application**

2.—(1) These Regulations apply in relation to Wales.

(**1**) *See* S.I. 2001/2555 for the designation conferred upon the National Assembly for Wales. By virtue of section 59 of, and paragraph 28(1) of Schedule 11 to, the Government of Wales Act 2006, that designation is now vested in the Welsh Ministers.
(**2**) 1972 c. 68. Section 2(2) was amended by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7) and by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51).
(**3**) S.I. 2008/3143 (W. 278), amended by S.I. 2010/489 (W. 55).

(2) Parts 3 to 8 only apply to a holding in a nitrate vulnerable zone designated as such by these Regulations.

(3) In the case of a holding which is partly in a nitrate vulnerable zone designated as such by these Regulations, Parts 3 to 8 apply only to the part of the holding inside the zone, and a reference to a holding in Parts 3 to 8 is a reference to that part.".

Substitution for regulations 7 to 10

3. For regulations 7 (designation of nitrate vulnerable zones), 8 (application for a declaration), 9 (proceedings before the appointed person) and 10 (effect of findings made by the appointed person) of the principal Regulations, substitute—

"**Designation of nitrate vulnerable zones**

7.—(1) In this Part—

"the appointed person" ("*y person penodedig*") means a person appointed by the Welsh Ministers;

"relevant holding" ("*daliad perthnasol*") means land and its associated buildings that are at the disposal of the occupier and which are used for the growing of crops in soil or rearing of livestock for agricultural purposes, and which are wholly or partly within an area which—

(a) the Agency recommends; and

(b) the Welsh Ministers are minded to accept (with or without amendment)

should be, or should continue to be, designated as a nitrate vulnerable zone for the purposes of these Regulations.

(2) The areas marked as nitrate vulnerable zones on the map marked "Nitrate Vulnerable Zones Index Map 2008" ("*Parthau Perygl Nitradau Map Mynegai 2008*") and deposited at the offices of the Welsh Ministers at Cathays Park, Cardiff, CF10 3NQ are designated as nitrate vulnerable zones for the purposes of these Regulations.

(3) Nitrate vulnerable zones are areas of land that drain into polluted waters and that contribute to the pollution of those waters.

(4) To assist the Welsh Ministers in relation to their duties under regulation 11(3), the Agency must, on 1 June 2012, and at the latest every 4 years subsequently, make recommendations to the Welsh Ministers by reference to the matters mentioned in regulation 11(3)(a) to (c) as to which areas should be designated, or continue to be designated, as nitrate vulnerable zones for the purposes of these Regulations.

(5) Any recommendations as to the matters stated at regulation 7(4) which have been made by the Agency prior to 1 June 2012 have effect as if made on that date.

(6) The Welsh Ministers must publish such of the Agency's recommendations which the Welsh Ministers are minded to accept (with or without amendment) and send notice of the recommendations to any owner or occupier of a relevant holding.

(7) A notice must contain a reference to a page on a website maintained by the Agency or the Welsh Ministers where the relevant recommendation (with any amendment the Welsh Ministers are minded to make to it) can be found.

Appeals

8.—(1) The owner or occupier of a relevant holding who is sent a notice under regulation 7(6) may make an appeal against that notice to the Welsh Ministers.

(2) The appeal is to be made only on one or more of the grounds stated in paragraph (3).

(3) The grounds are that in relation to the relevant holding or any part of it, the recommendations of the Agency (subject to any amendment the Welsh Ministers are minded to make to them) should not be accepted by the Welsh Ministers because the relevant holding or any part of it—

(a) does not drain into water which—

(i) the Welsh Ministers are minded to identify, or continue to identify, as being polluted, or

(ii) has been similarly identified in England; or

(b) drains into water that the Welsh Ministers should not identify, or continue to identify, as being polluted.

(4) The appeal is to be based on either—

(a) data provided by the appellant; or

(b) evidence provided by the appellant that the data relied on by the Welsh Ministers is incorrect.

(5) The appeal must—

(a) be made in writing in the manner and form published by the Welsh Ministers;

(b) include details of all the evidence that the appellant intends to rely on; and

(c) be received by the Welsh Ministers no later than 35 days after the date on which the Welsh Ministers sent the notice to which the appeal relates.

(6) The Welsh Ministers must remit the appeal to the appointed person for consideration and determination.

Proceedings before the appointed person

9.—(1) If the appointed person is satisfied that a submitted appeal complies with the requirements of regulation 8 in all material particulars, the appointed person must proceed to determine the appeal.

(2) The procedure for determining the appeal is to be decided by the appointed person.

(3) But that is subject to the following provisions of this regulation.

(4) Before determining the appeal the appointed person must, allowing such time as is reasonable—

(a) invite the appellant and the Welsh Ministers to submit representations and supporting documents in relation to the appeal;.

(b) send to the Welsh Ministers a copy of any representations and supporting documents submitted by the appellant;

(c) send to the appellant a copy of any representations and supporting documents submitted by the Welsh Ministers;

(d) allow the appellant and the Welsh Ministers an opportunity to submit comments on each other's representations and supporting documents to the appointed person.

(5) The appointed person may at any time request further information from the appellant or the Welsh Ministers.

(6) The appointed person may invite any person appearing to have a significant interest in an appeal to submit representations, but must allow the appellant and the Welsh Ministers an opportunity to submit comments on any representations made.