

SL(5)549 – The Bathing Water (Amendment) (Wales) (Coronavirus) Regulations 2020

Background and Purpose

These Regulations amend regulation 4 of the Bathing Water Regulations 2013 (“the 2013 Regulations”) in order to change the start date of the bathing season in Wales for the year 2020. This amendment is part of the Welsh Government’s response to the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a negative instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 14 May 2020.

In particular, we note what the letter says regarding Natural Resources Wales (“NRW”) being unable, as a result of the COVID-19 crisis, to carry out their usual pre-season sampling of bathing waters and collate the necessary water quality data to support the start of the bathing season on 15 May. Without these amending Regulations regulations in place, 15 May would be the specified statutory start date of the bathing season in Wales and NRW would be in breach of their statutory obligations. The letter states that:

“Not adhering to the 21 day convention is considered necessary and justifiable in light of the unavoidable circumstances linked to the COVID-19 emergency situation. This would not only provide the necessary legal clarity regarding the 2020 bathing season in Wales but would also minimise any the risk of NRW breaching their statutory sampling obligations.”

2. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

The 2013 Regulations, which are being amended by these Regulations, are composite and apply to England and Wales.



The amendment made by these Regulations however will only apply in relation to Wales. The amendment to regulation 4 of the 2013 Regulations means that the dates for the bathing season in Wales will be different to England in the year 2020. The UK Government have decided not to make any changes.

These amending Regulations change the position in Wales to read as follows:

“For the purposes of these Regulations, the bathing season in Wales—

(a) subject to paragraph (b), begins on 15th May and ends at the end of the day on 30th September in each year;

(b) for the year 2020, begins on 22nd June and ends at the end of the day on 30th September.”

However the amending Regulations have not removed the words ‘and Wales’ where the text will now relate to England. This reads:

“For the purposes of these Regulations, the bathing season in England and Wales begins on 15th May and ends at the end of the day on 30th September in each year.”

Whilst the amending Regulations are technically sound the change causes a lack of clarity in the primary 2013 Regulations.

The Committee consider that a change to the text as it applies to England would be within competence as its purpose is to clarify the law as it applies in Wales. It does not change the law in England.

Implications arising from exiting the European Union

These Regulations are made under section 2(2) of the European Communities Act 1972. As such, they will form part of retained EU law after IP completion day (i.e. the end of the implementation period, on 31 December 2020).

Government Response

Government response to merits scrutiny point 2 on the Bathing Water (Amendment) (Wales) (Coronavirus) Regulations 2020

This point is noted. The Welsh Government did consider that the reference to “Wales” in the text that applies to England could be removed. We agree with the Committee that this would have been clearer. However, while we had discussed the bathing season issue more widely with Defra colleagues, we had not received confirmation from Defra that they would not be making similar provision in relation to England.

Given the emergency nature of this COVID-related instrument and the extremely tight timescales involved there was insufficient time as to be certain of receiving confirmation back from the UK Government before the Regulations needed to be made (following whatever internal consideration they might wish to undertake)

In lieu of that confirmation, there would be a risk of conflicting provisions arising because of such an approach. It was therefore considered sensible in these circumstances to proceed with the amendment as drafted in relation to Wales and avoid the risk of genuine version issues arising.



As it stands, while there is a reference to “Wales” in the English text, it does not create any practical problems in England – or, indeed, in Wales – because of course bathing waters in Wales can only be subject to the law applicable to Wales.

Committee Consideration

The Committee considered the instrument and Government response at its meeting on 8 June 2020 and reports to the Senedd in line with the reporting points above.



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee