

## **Explanatory Memorandum to the Water Resources (Control of Pollution) (Silage, Slurry and Agriculture Fuel Oil) (Wales) Regulations 2010**

This Explanatory Memorandum has been prepared by the Department of Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Water Resources (Control of Pollution) (Silage, Slurry and Agriculture Fuel Oil) (Wales) Regulations 2010.

*Elin Jones*

Minister for Rural Affairs

26 May 2010

## **1. Description**

The Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010 (“the SSAFO Regulations”) establish certain containment and construction standards for silage-making and storage, slurry storage systems and agricultural fuel oil stores, in order to reduce incidents of water pollution.

## **2. Matters of special interest to the Constitutional Affairs Committee**

None

## **3. Legislative background**

The powers to make this statutory instrument are contained in Sections 92 and 219(2)(d) to (f) of the Water Resources Act 1991, and these powers are exercisable by Welsh Ministers in relation to Wales.

The Regulations will be made under the Negative Resolution procedure.

## **4. Purpose & intended effect of the legislation**

A previous, version of the SSAFO Regulations was made in 1991, and amended in 1997. However, the SSAFO Regulations need to be re-made because the Department has become aware that they were not notified to the EU Technical Standards Committee in 1991 (nor when they were amended in 1997).

It is a requirement of the Technical Standards and Regulations Directive that Member States must notify the Commission of any proposed regulations which prescribe technical specifications. The intention of this requirement is to expose any potential new trade barriers.

To ensure the enforceability of the SSAFO Regulations, they are being re-made according to the correct procedure. This is an administrative exercise and the obligations imposed by the SSAFO Regulations have not changed. The SSAFO Regulations were notified to the European Commission on 12th January 2009 and the notification period ended on 13th April 2010.

The 1991 SSAFO Regulations applied to England and Wales, but the new Regulations will apply to Wales only. This is consistent with the approach taken on other Statutory Instruments. Similar Regulations have been prepared

for England, which have also been notified to the EC Technical Standards Committee and came into force on 6 April 2010.

The SSAFO Regulations were introduced to minimise the risk of water pollution from silage, slurry and agricultural fuel oils by setting minimum standards for the design, construction and maintenance of structures used to store these substances.

The Regulations require that all new (and substantially reconstructed or enlarged stores) are:

- sited at least 10 metres from any inland freshwaters or coastal waters;
- designed to last for at least 20 years, with maintenance (except below ground silage effluent tanks which are required to last for 20 years without maintenance); and
- designed and built to meet specific standards and requirements.

The technical aspects of the SSAFO Regulations are key to the enforceability of the Nitrates Pollution Prevention Regulations 2008 (“the Nitrates Regulations”), which implement the Nitrates Directive. The Nitrates Regulations require farmers in areas designated as Nitrate Vulnerable Zones, to provide sufficient storage facilities to store all slurry produced by livestock during a period of 6 months for pigs and 5 months for cattle, and to store all poultry manure produced during a period of 6 months.

These storage facilities must be constructed to the standards specified in the SSAFO Regulations. Therefore, to ensure effective enforcement of our nitrates policy, it is important that the SSAFO Regulations have been made according to the correct procedure so that enforcement action can be taken where necessary.

## **5. Consultation**

As the SSAFO Regulations are being re-made simply for administrative reasons, the Department has not undertaken a public consultation. The requirements imposed by the SSAFO Regulations have not been amended and therefore they impose no additional burden.

## **6. Regulatory Impact Assessment (RIA)**

A Regulatory Impact Assessment has not been prepared for this instrument as it imposes no additional burden.