

Explanatory Memorandum to The Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) (No. 2) Regulations 2023

This Explanatory Memorandum has been prepared by Climate Change and Rural Affairs Group and is laid before Senedd Cymru 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 Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) (No. 2) Regulations 2023 and I am satisfied that the benefits justify the likely costs.

Lesley Griffiths
Minister for Rural Affairs and North Wales, and Trefnydd

10 October 2023

PART 1

1. Description

1. These regulations amend the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 (“the 2021 Regulations”). The amendments specified in these Regulations only apply to holdings not previously in a nitrate vulnerable zone (“NVZ”).
2. These regulations implement the first stage of a two-stage process for introducing an Enhanced Nutrient Management approach for holdings or part of holdings not previously situated within an NVZ. The Enhanced Nutrient Management approach will allow higher levels of nitrogen application (up to 250kg/n/ha) from livestock manure, until the end of 31 December 2024, subject to crop need and well-defined environmental controls.
3. The effect of these Regulations is to extend the transitional provision for the 170kg/ha annual nitrogen holding limit on the spreading of livestock manures (“the 170kg limit”), and the associated record keeping requirement, for holdings or part of holdings not previously situated within a nitrate vulnerable zone (“NVZ”) from 31 October 2023 until 1 January 2024.
4. These Regulations therefore ensure that the transitional period in relation to the 170kg limit for holdings or part of holdings not previously situated within an NVZ does not expire and so there is no gap in the transitional provision, providing legal certainty for occupiers of such holdings. This extension to the transitional period will provide adequate time to implement the second stage of the Enhanced Nutrient Management approach. The second stage will be implemented via a second set of Regulations and will set out the enhanced environmental controls that occupiers must comply with for the calendar year 2024 in order to apply higher levels of nitrogen (up to 250kg/n/ha) from livestock manure to their holdings.
5. The 170kg limit, and associated record keeping requirement, currently apply to holdings already within an NVZ and this is not altered by these Regulations.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

6. None.

3. Legislative background

7. The Water Resources Act 1991 (c. 57) grants the Welsh Ministers the power to make Regulations to, among other things, prevent and control pollution. These Regulations are made in exercise of the Welsh Ministers' powers under Sections 92 and 219(2)(e) to (f) of that Act.
8. Article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) transferred functions of the Secretary of State under section 92 of the Water Resources Act 1991 to:
 - a) the National Assembly for Wales in relation to those parts of Wales which are outside the catchment areas of the rivers Dee, Wye and Severn, and
 - b) in relation to those parts of Wales which are within those catchment areas, functions under section 92 are exercisable by the National Assembly for Wales concurrently with the Secretary of State.
9. Functions of the National Assembly for Wales are exercisable by the Welsh Ministers (so far as exercisable in relation to Wales) by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).
10. These Regulations are being made under the negative resolution procedure and will come into force on 31 October 2023.

4. Purpose and intended effect of the legislation

11. The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 seek to tackle the causes of water pollution from agricultural activities across Wales.
12. The purpose of these Regulations is to extend the transitional period for the 170kg limit prescribed by regulation 4 of the 2021 Regulations and the associated record keeping requirement at regulation 36 of the 2021 Regulations for holdings or part of holdings not previously situated within an NVZ from 31 October 2023 until 1 January 2024.
13. The effect of extending the transitional period means that relevant date by which to make certain records and calculations of the previous calendar year under regulation 36 of the 2021 Regulations will be deferred until 30 April 2025.
14. This extension will provide adequate time to implement an Enhanced Nutrient Management approach for holdings or part of holdings not previously situated within an NVZ and implement the first part of a two-stage approach. This all-Wales approach would allow higher levels of nitrogen application (up to 250kg/n/ha) from livestock manure, until 2025, subject to crop need and well defined environmental controls. These Regulations ensure that the transitional period in relation to the 170kg limit for holdings or part of holdings not previously situated within an NVZ

does not expire and so there is no gap in the transitional provision, providing legal certainty for occupiers of such holdings.

5. Consultation

15. As the Regulations provide a limited amendment extending implementation of the substantive regulations for a short period and do not reflect a change in the Welsh Government's policy, a formal public consultation did not take place.

Formal consultation

16. The Welsh Government consulted on proposals to introduce a licensing scheme for farm businesses to work to a higher annual nitrogen holding limit of 250kg/ha, subject to crop need and other legal considerations, for 12 weeks from 25 November 2022 to 17 February 2023.

17. The consultation documents are available at:

<https://gov.wales/nutrient-management-managing-application-livestock-manures-sustainably>

Regulatory Impact Assessment

6. Options:

18. The options to be considered concern the effective date of the regulations. There are two options:

- i) Business as usual;
- ii) Delayed introduction of the 170kg/ha limit on nitrogen application with effect from 1 January 2024;

Option i) Business as usual

19. Under option i) business as usual, the regulations would come into effect from 31 October 2023. This would leave no time for implementation of any relevant approach to allow farm businesses more time to prepare for working to a lower limit. One effect might be that farm businesses would exceed the 170kg/ha limit on nitrogen application from livestock manure – because they had excess manure that they could not use or otherwise dispose of.

20. However, elements of the Regulations already in force require farms to assess the risks of pollution before any applications to land are made. Applications are prohibited where there is a significant risk of pollution. Additionally, there is a limit of 250kg/ha on the spreading of organic manure for any 12 month period.

21. Another effect might be that farm businesses would have to reduce their livestock numbers (to reduce the amount of manure they produce). This could in turn reduce food production (such as milk) and lead either to increased prices or unmet demand. However, this would not be necessary if Ministers introduce an Enhanced Nutrient Management approach from 1 January 2024 until 31 December 2024, allowing farm businesses to apply a higher level of nitrogen.

Option ii) - Delayed introduction of the 170kg/ha limit on nitrogen application with effect from 1 January 2024

22. Under option ii) If the regulations are amended as proposed, so that they come into effect from 1 January 2024, this will ensure that the transitional period in relation to the 170kg limit for holdings or part of holdings not previously situated within an NVZ does not expire and so there is no gap in the transitional provision, providing legal certainty for occupiers of such holdings. This will also allow time for the implementation of the second stage of the Enhanced Nutrient Management approach allowing higher levels of nitrogen application (up to 250kg/n/ha) from livestock manure, until 2025, subject to crop need and well-defined environmental controls.

23. During the two-month period of the extension – from 31 October 2023 to 31 December 2023 farms are likely to reduce or stop spreading manure ahead of winter due to limited crop demand for nutrients. There are existing controls on spreading manure in excess of crop need and in inappropriate conditions. Therefore, delaying the implementation of the 170kg limit until 1 January 2024 is unlikely to lead to a significant increase in nitrogen application on farm holdings within this two-month period.

Preferred option

24. Of these two options, the preferred option is option ii) – extension of the implementation of the 170kg/ha nitrogen application limit until 1 January 2024. The two month period of the proposed delay strikes a balance between

- allowing sufficient time to develop and implement an Enhanced Nutrient Management approach allowing higher levels of nitrogen application (up to 250kg/n/ha) from 1 January 2024 to 31 December 2024;
- but not delaying the introduction of the 170kg/ha limit much beyond the point in the annual crop cycle when crops will have been harvested or colder weather will have slowed or stopped them growing and livestock numbers will be reduced ahead of winter- and hence farms would usually stop spreading manure.

7. Costs and benefits

25. No environmental cost or benefits are expected to result from the legislation.
26. The impact of Option ii) on farm businesses will be to provide clarity they have more time to plan for and transition to the 170kg/ha limit, and, this delay will enable a smooth transition into the Enhanced Nutrient Management approach for those who need to exceed the 170kg/ha limit.
27. The 170kg/ha limit on nitrogen application is an annual limit and so there would be minimal or no impact on winter or spring applications of livestock manures to land in 2023/2024.
28. Any environmental costs or benefits in 2023 would be negated by the costs/benefits associated with changes in practice in the late winter and spring of 2024.
29. A further regulatory impact assessment will be undertaken in relation to the proposed Enhanced Nutrient Management approach for a higher (250kg) annual limit on nitrogen application.
30. Under Option i), farms would need to comply with the annual 170kg/ha limit from 31 October 2023, but could then transition to the higher limit if and when a relevant scheme is introduced and they are eligible. As the 170kg limit is an annual limit, the majority of farms would not need to change their practices in the interim period to comply with the 170kg/ha limit and so there is not anticipated difference in the cost/benefit compared to Option ii). However, there would be uncertainty for farms as to if or when a relevant scheme would be introduced, and monitoring and recording nitrogen application would be complicated with different limits applying at different points in the year. Where a relevant scheme is not introduced, this would have the effect as the status quo. This option would also create uncertainty for farms on whether they would need to take any action in the interim period.
31. The impact of both options on the time and resources needed for farms to plan are similar. However the lack of clarity under Option i) could impact effective business planning or require farms to undertake planning for different scenarios which may increase time and resource requirements.

8. Competition Assessment

32. The competition filter test has been applied, the Regulations are not expected to impact on the level of competition within Wales or the competitiveness of Welsh businesses.