

Explanatory Memorandum to The Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) 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) Regulations 2023 and I am satisfied that the benefits justify the likely costs.

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

26 April 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. The effect of the 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 30 April 2023 until 31 October 2023.
3. 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

4. In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that this Instrument will come into force less than 21 days after the instrument has been laid. The legislation must come into force by 29 April 2023 to ensure 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.

3. Legislative background

5. 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.
6. 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.
7. 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).
 8. These Regulations are being made under the negative resolution procedure and will come into force on 30 April 2023.

4. Purpose and intended effect of the legislation

9. The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 seek to tackle the causes of water pollution from agricultural activities across Wales.
10. 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 30 April 2023 until 31 October 2023.
11. The effect of extending the transitional period means that the reporting periods under the 2021 Regulations for the 170kg limit, for an occupier of a holding or part of a holding not already within an NVZ will also be deferred as follows:
 - a. the relevant 12 month period for the purposes of the 170kg limit under regulation 4 of the 2021 Regulations will be 31 October to 30 October;
 - b. the relevant date by which to make certain records and calculations of the previous 12 month period ending 30 October under regulation 36 of the 2021 Regulations will be “before 28 February”.
12. This extension will enable work to introduce a relevant scheme to allow farm businesses to work to a higher annual nitrogen holding limit of up to 250kg/ha, subject to crop need and other legal considerations. If the transitional provisions in relation to these requirements were not extended, there would be no time to complete the work needed to implement controls on nitrogen application such as those on which the Government consulted between November 2022 and February 2023.

5. Consultation

13. 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

14. 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 twelve weeks from 25 November 2022 to 17 February 2023.

15. The consultation documents are available at:

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

Regulatory Impact Assessment

6. Options:

16. The options to be considered concern the effective date of the regulations. There are three options:
- i) Business as usual;
 - ii) Delayed introduction of the 170kg/ha limit on nitrogen application with effect from 31 October 2023;
 - iii) Delayed introduction of the 170kg/ha annual limit to take effect from some other date.

Option i) Business as usual

17. Under option i) business as usual, the regulations would come into effect from 30 April 2023. This would leave no time for implementation of a relevant scheme 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.
18. 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.

19. 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 a licensing scheme from October 2023 until 2025, 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 31 October 2023

20. Under option ii) If the regulations are amended as proposed, so that they come into effect from 31 October 2023, this will allow time for the development and implementation of a relevant scheme that would allow some farm businesses to work to a higher annual holding nitrogen limit from livestock manures of up to 250kg/ha subject to crop need and other legal considerations.

21. During the six-month period of the extension – from 1 May to 31 October nutrient need and crop growth is likely to be high. There are existing controls on spreading manure in excess of crop need. So delaying the implementation of the 170kg limit until 31 October is unlikely to lead to a significant increase in nitrogen application on farm holdings.

Option iii) – delayed introduction to another date

22. Alternative options would be to amend the regulations so that they came into effect either earlier (between 1 May 2023 and 31 October 2023) or later than is proposed (after 31 October 2023).
23. If the regulations came into effect before 31 October 2023, there would not be enough time to properly develop and implement the proposing licensing scheme and for farm businesses to prepare for the introduction of such a scheme.
24. If the regulations came into effect later than 31 October 2023, there is a risk that that when the regulations do come into effect, they will disadvantage some farm businesses depending on the point they have reached in delivering their nutrient management plan for the year. It could also increase the risk of pollution as applications may be unsuitably applied in the wetter winter months where crop growth is limited.

Preferred option

25. Of these three options, the preferred option is option ii) – extension of the implementation of the 170kg/ha nitrogen application limit until 31 October

2023. The six month period of the proposed delay strikes a balance between

- allowing sufficient time to consult on and for Ministers to take decisions on a relevant scheme for a higher limit of nitrogen application (from 31 October, 2023);
- 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

26. No environmental cost or benefits are expected to result from the legislation.
27. 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, where a licencing scheme is introduced following consultation, this delay in the introduction of the 170kg/ha limit will enable a smooth transition into the licencing scheme for those who are eligible and wish to apply.
28. 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.
29. 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.
30. A further regulatory impact assessment will be undertaken in relation to the proposed licensing scheme for a higher (250kg) annual limit on nitrogen application, that is currently the subject of consultation. That RIA will inform decisions, following the close of consultation and analysis and consideration of responses, on whether to introduce such a scheme.
31. Under Option i), farms would need to comply with the annual 170kg/ha limit from 30 April 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.

32. Under Option iii), a reduced implementation delay would not provide sufficient time to establish any licencing scheme and the cost/benefit would be similar to Option i). This would also create uncertainty for farms on whether they would need to take any action in the interim period.
33. If an extended implementation delay was provided, the impact would be similar to Option ii), unless the delay was so significant it would lead to a significant increase in autumn applications of livestock manure to land which could lead to increased nutrient losses. However, an extended delay leading to this effect would not be acceptable and so the cost/benefit of an extended delay would be similar to Option ii). .
34. The impact of all three options on the time and resources needed for farms to plan are similar.

8. Competition Assessment

35. 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.