

Explanatory Memorandum to The Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) Regulations 2022

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 2022. I am satisfied that the benefits justify the likely costs.

Lesley Griffiths MS

Minister for Rural Affairs and North Wales, and Trefnydd

9 December 2022

PART 1

1. Description

1. These Regulations amend the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 (“the 2021 Regulations”).
2. The effect of the Regulations is to defer the implementation date of 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 1 January 2023 until 30 April 2023.
3. The 170kg limit, and associated record keeping requirement, currently apply to holdings already within an NVZ and this is not altered by the Regulations.

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

4. None

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)(d) 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 31 December 2022.

4. Purpose and intended effect of the legislation

9. The 2021 Regulations seek to tackle the causes of water pollution from agricultural activities across Wales.

10. Phase 2 of the 2021 Regulations come into force on 1 January 2023.

11. The purpose of these Regulations is to defer the implementation date of 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 1 January 2023 until 30 April 2023.

12. The effect of deferring the implementation date means there will be two reporting periods under the 2021 Regulations for the 170kg limit, as follows:

- a. For an occupier of a holding already within an NVZ:
 - i. the relevant 12 month period for the purposes of the 170kg limit under regulation 4 of the 2021 Regulations will remain as 1 January to 31 December.
 - ii. the relevant date by which to make certain records and calculations of the previous 12 month period ending 31 December under regulation 36 of the 2021 Regulations will remain as “before 30 April”.
- b. For an occupier of a holding or part of a holding not already within an NVZ:
 - i. the relevant 12 month period for the purposes of the 170kg limit under regulation 4 of the 2021 Regulations will be 30 April to 29 April.
 - ii. the relevant date by which to make certain records and calculations of the previous 12 month period ending 29 April under regulation 36 of the 2021 Regulations will be “before 31 August”.

13. The other Phase 2 measures under the 2021 Regulations will come into force on 1 January 2023 as planned.

14. The extension to the implementation date will enable a formal consultation 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. If the

implementation date for the 2021 Regulations were not extended, there would not be time to complete formal consultation on the proposed licensing scheme.

15. These Regulations will affect farm holdings in Wales that are subject to control through the 2021 Regulations.

5. Consultation

16. 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

17. The extension to the implementation date provided by these Regulations will enable a formal consultation on proposals to introduce a licensing scheme for farm businesses to work to a higher annual nitrogen holding limit of up to 250kg/ha, subject to crop need and other legal considerations.
18. We are consulting on proposals for such a scheme to be operational until 2025. The consultation was published on 25 November 2022 and runs for twelve weeks, closing on 17 February 2023.
19. The consultation documents are available at:

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

Regulatory Impact Assessment

6. Options:

1. 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 limit on nitrogen application with effect from 30 April 2023
 - iii) Delayed introduction of the 170kg annual limit to take effect from some other date

Option i) Business as usual

2. Under option i) business as usual, the regulations would come into effect from 1 January 2023. This would leave no time for

consultation on a proposal for a licensing 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 limit on nitrogen application – because they had excess manure that they could not use or otherwise dispose of. If farms sought to spread excess manure after 1 January 2023, in the winter months when crop growth and nutrient need is low, this could lead to run off and pollution of water courses and rivers in Wales.

3. 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.
4. Another effect might be that farm businesses feel obliged to make changes to comply with the 170kg limit from January 2023. However, this would not be necessary if Ministers introduce a licensing scheme from April 2023 until 2025, allowing farm businesses to apply a higher level of nitrogen.

Option ii) -

5. Under option ii) If the regulations are amended as proposed, so that they come into effect from 30 April 2023, this will allow time for a full consultation on proposals for a licensing scheme that would allow some farm businesses to work to a higher annual holding nitrogen limit of up to 250kg/ha subject to crop need and other legal considerations.
6. A consultation paper on proposals for such a scheme to be operational until 2025 was published on 25 November 2022. Consultation will last for twelve weeks and closes on 17 February. There will be sufficient time for analysis and consideration of responses to consultation, before taking decisions on whether to introduce a licensing scheme from May 2023. If a licence scheme is introduced, there will also be time for farm businesses to consider whether to apply for a licence.
7. During the four-month period of the extension – from 1 January to 30 April, crop growth and nutrient need is likely to be low. There are existing controls on spreading manure in excess of crop need. So delaying the implementation of the 170kg limit until 30 April is unlikely to lead to a significant increase in nitrogen application on farm holdings.

Option iii) – delayed introduction to another date

8. Alternative options would be to amend the regulations so that they came into effect either earlier (between 1 January 2023 and 30 April

2023) or later than is proposed (after 30 April 2023).

9. If the regulations came into effect before 30 April 2023, there would not be enough time to properly consider the responses to consultation on the proposing licensing scheme and for farm businesses to prepare for the introduction of such a scheme. If the regulations came into effect before 17 February (when the consultation closes) there would be no time to consider responses to the consultation and for farm businesses to prepare for the introduction of any licensing scheme.
10. If the regulations came into effect later than 30 April 2023, there is a risk 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.

7. Costs and benefits

11. No environmental cost or benefits are expected to result from the legislation.
12. Option i) is the baseline option and, as such, there are no additional costs or benefits associated with this option. Farms would need to comply with the annual 170kg limit from 1 January 2023 but could then transition to the higher limit if a licensing scheme is introduced and they are eligible. As the licencing scheme is proposed for introduction in April 2023 and 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 limit. This option would create uncertainty for farms on whether they would need to take any action in the interim period.
13. 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 limit, and, where a licencing scheme is introduced following consultation, this delay in the introduction of the 170kg limit will enable a smooth transition into the licencing scheme for those who are eligible and wish to apply. This option is not expected to impose any additional costs on farm businesses, relative to Option i).
14. The 170kg limit on nitrogen application is an annual limit and so there would be minimal or no impact on late winter or spring applications of livestock manures to land in 2023.
15. 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.

16. 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.
17. 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).
18. The impact of all three options on the time and resources needed for farms to plan are similar.
19. A further regulatory impact assessment will be undertaken in relation to the proposed licensing scheme for a higher (up to 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.

Summary of the preferred option

20. Of these three options, the preferred option is option ii) – extension of the implementation of the 170kg nitrogen application limit until 30 April 2023. The four month period of the proposed delay strikes a balance between
 - allowing sufficient time to consult on and for Ministers to take decisions on a possible licensing scheme for a higher limit of nitrogen application (from April 30, 2023);
 - but not delaying the introduction of the 170kg limit much beyond the point in the annual crop cycle when crops will be growing strongly and livestock numbers will be increasing and hence farms would usually start spreading manure.

8. Competition Assessment

21. 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.