

SL(5)735 – The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021

Background and Purpose

These Regulations make provision concerning the protection of waters against pollution by nitrates from agricultural sources.

These Regulations revoke and replace—

- (a) the Nitrate Pollution Prevention (Wales) Regulations 2013 (S.I. 2013/2506 (W. 245)) which control the application of nitrogen fertiliser in nitrate sensitive areas, and
- (b) the Water Resources (Control of Pollution) (Silage and Slurry) (Wales) Regulations 2010 (S.I. 2010/1493 (W. 136)) which regulate the custody and control of silage and slurry and provided the design and construction standards applicable for its storage.

The requirements under the Nitrate Pollution Prevention (Wales) Regulations 2013 applied only to holdings situated in designated Nitrate Vulnerable Zones, these requirements will now apply to all holdings in Wales. The majority of the measures in the Water Resources (Control of Pollution) (Silage and Slurry) (Wales) Regulations 2010 will continue to apply under these Regulations but the capacity requirements for the storage of organic manure and silage in those Regulations are superseded and mirror those in the Nitrate Pollution Prevention (Wales) Regulations 2013.

Any persons proposing to build or improve their storage facility for slurry or silage will be required to notify the Natural Resources Body for Wales (“NRBW”) 14 days before construction work is begun. This replaces the previous requirement for notification prior to the storage facility’s actual use.

Occupiers of organic holdings wishing to benefit from the exemption to the closed periods for spreading organic manure with high readily available nitrogen (regulation 20) must now submit an undertaking to the control system referred to in Article 27 of Council Regulation (EC) 834/2007 rather than register with the Advisory Committee on Organic Standards (which has now been dissolved).

Procedure

Negative

Technical Scrutiny

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



Merits Scrutiny

The following 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

Regulation 30 enables NRBW to serve a notice requiring a person to carry out works or take precautions or other steps, as specified in the notice. The period for compliance with such a notice is 28 days or such longer period as is reasonable in the circumstances (regulation 30(4)). Appeals against regulation 30 notices can be made to the Welsh Ministers, in accordance with regulation 31. Where such an appeal is made, regulation 31(6) provides that the period for compliance is “subject to any direction under paragraph (5)” (which amongst other things, can extend the period for compliance with any requirement) “extended so that it expires on the date on which the Welsh Ministers finally determines the appeal, or if the appeal is withdrawn, the date on which it is withdrawn”. Where an appeal is withdrawn by the appellant, the appellant would be able to prepare to comply with the notice. However, where the Welsh Ministers determine the appeal and, as such, works, precautions or other steps are required to be undertaken, there appear to potentially be circumstances where appellants are obligated to undertake works/take action on the same day as the result of their appeal is known. This may mean that appellants are either unable to comply in time with the determination, or in some circumstances, preparatory work may have been undertaken unnecessarily. The power for Welsh Ministers to “extend the period for compliance with any requirement” in regulation 31(5)(c) is therefore important to reduce the risk of this occurring.

Welsh Government response

A Welsh Government response is required.

Committee Consideration

The Committee considered the instrument at its meeting on 22 February 2021 and agreed to report to the Senedd in line with the reporting point above, and to request a response to the point from the Welsh Government. The Committee also noted that a motion to annul the Regulations has been tabled, and that the corresponding debate is scheduled to take place on 3 March 2021.

