

SL(6)354 – The Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) Regulations 2023

Background and Purpose

These Regulations amend The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 (the “2021 Regulations”). The amendments will extend the transitional provision for the 170kg/ha annual nitrogen holding limit on the spreading of livestock manures, and the associated record keeping requirement, for holdings or part of holdings not previously within a nitrate vulnerable zone (NVZ) from 30 April 2023, to 31 October 2023.

Where holdings are already within an NVZ, the 170kg limit and associated record keeping requirement are unaffected by the amendments made by these Regulations.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

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

Merits Scrutiny

The following two 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 to be of interest to the Senedd

We note the breach of the 21-day convention (i.e. the convention that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Lesley Griffiths MS, Minister for Rural Affairs and North Wales, and Trefnydd, in a letter to the Llywydd dated 26 April 2023. This states as follows:

“The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 seek to tackle the causes of water pollution from agricultural activities across Wales. Phase 2 of the regulations came into force on 1 January 2023, but, in relation to holdings or



part of holdings not previously situated within a nitrate vulnerable zone ("NVZ"), the transitional provision for the 170kg/ha annual nitrogen holding limit on the spreading of livestock manures (the '170kg limit') and associated reporting requirements were extended until 30 April 2023.

These Regulations extend the transitional provision for the 170kg/ha annual nitrogen holding limit on the spreading of livestock manures (the '170kg limit') and the associated reporting requirements in relation to holdings or part of holdings not previously situated within an NVZ again from April 2023 to 31 October 2023.

We recently consulted on proposals to introduce a licensing scheme for farm businesses not previously situated within an NVZ to work to a higher annual nitrogen holding limit of 250kg/ha, subject to crop need and other legal considerations. There were more than 1,500 responses to the consultation and stakeholders were concerned that a licensing scheme could be costly and complicated to implement. We are therefore undertaking further work to consider options for the regulation of nitrogen application and need more time to complete this work before implementing the 170kg/ha annual limit. In light of that, we need to extend the transitional period in relation to the 170kg/ha limit for a further six months."

In particular, we note what the letter says regarding the expiration of the transitional period:

"The reason for not adhering to the 21-day convention in this case is that if these Regulations do not come into force before 30 April 2023, then the transitional period in relation to the 170kg limit for holdings or part of holdings not previously situated within an NVZ expires, and there would be a gap in the transitional provision. This extension of the transitional provisions in relation to the 170kg limit and associated reporting requirements while we continue to develop our proposals further provides farm businesses not previously situated within an NVZ with legal certainty."

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy to be of interest to the Senedd

These Regulations come into force on 29 April 2023. Paragraph 4 of the Explanatory Memorandum (EM) accompanying the Regulations confirms that:

"...the legislation must come into force by 29 April 2023 to ensure the transitional period...does not expire and so there is no gap in the transitional provision."

However, Paragraph 8 of the EM states erroneously as follows:

"These Regulations are being made under the negative resolution procedure and will come into force on 30 April 2023."

The 2021 Regulations are defined in paragraph 1 of the EM, and the definition is used in paragraphs 10 and 11 of the EM, but not used in later paragraphs of the EM. This is



unhelpful in assisting the reader to understand which regulations are being referred to. It is not immediately clear to a reader which regulations are being discussed. The Regulatory Impact Assessment, (paragraph 16 of the EM) refers to the *“effective date of the regulations”*. Paragraph 17 of the EM states, that if business as usual were the chosen option, *“the regulations would come into effect from 30 April 2023”*. It isn’t clear whether these references mean the 2021 Regulations (as defined at paragraph 1) or these Regulations. We take them to mean the 2021 Regulations. Paragraph 18 then refers to the *“Regulations”* which we take to mean the 2021 Regulations. Paragraph 20 states *“if the regulations are amended as proposed”* which we take to mean the 2021 Regulations. This is followed in paragraphs 22-24 with the use of *“the regulations”* in each. Again, we take these references to mean the 2021 Regulations.

The lack of clarity between the provision in the Regulations themselves, on the one hand, and what is described in the EM (in some places conflictingly, in the case of the coming into force date), may cause unnecessary confusion for readers of the legislation, particularly given the technical complexity of the subject matter of the 2021 Regulations.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

3 May 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee