

# **SL(6)436 – The Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) (No. 4) Regulations 2023**

## **Background and Purpose**

These Regulations amend the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 (S.I. 2021/77 (W. 20)) (“the 2021 Regulations”), and are due to come into force on 31 December 2023.

These Regulations implement the second stage of a two-stage process for introducing an enhanced nutrient management regime for the calendar year 2024 for holdings or part of holdings not previously situated within a Nitrate Vulnerable Zone (“NVZ”) and sown with at least 80% grass (defined in these Regulations as “qualifying grassland holdings”).

Regulation 3 amends regulation 2 (transitional measures for holdings not previously in a nitrate vulnerable zone) of the 2021 Regulations. It changes the implementation date for regulation 4 (application of livestock manure – total nitrogen limit for the whole holding) for holdings or parts of holdings not previously situated within a NVZ as shown on the NVZ index map, where 80% or more of the agricultural area is sown with grass (“qualifying grassland holdings”) from 1 January 2024 to 1 January 2025. This means that the total nitrogen limit in livestock manure for the whole holding (170kg multiplied by the area of the holding in hectares) in regulation 4 of the 2021 Regulations does not apply to qualifying grassland holdings until 1 January 2025.

Regulation 4 amends regulation 3 (interpretation) of the 2021 Regulations by inserting definitions of the terms “enhanced nutrient management plan”, “precision spreading equipment”, “qualifying grassland holding” and “relevant period”. It also substitutes a definition of “NRW” for “NRBW”.

Regulation 5 inserts new regulations 4A and 4B into the 2021 Regulations. Regulation 4A (application of grazing and non-grazing livestock manure on qualifying grassland holdings during the relevant period) requires the occupier of a qualifying grassland holding to ensure that for the calendar year 2024 (“the relevant period”) the area of the holding (in hectares) is greater than or equal to the sum of the total amount of nitrogen in grazing livestock manure applied to the holding divided by 250, plus the total amount of nitrogen in non-grazing livestock manure applied to the holding divided by 170. The purpose of this calculation is to limit the total amount of nitrogen in livestock manure that an occupier of a qualifying grassland holding is permitted to apply to the holding, whether directly by an animal or by spreading, during the relevant period. It ensures that where an occupier of a qualifying grassland holding is only applying grazing livestock manure to the holding, they must not apply more than 250kg of nitrogen in grazing livestock manure per hectare during the relevant



period. It also ensures that where an occupier of a qualifying grassland holding is only applying non-grazing livestock manure to the holding, they must not apply more than 170kg of nitrogen in non-grazing livestock manure per hectare during the relevant period. Where an occupier of a qualifying grassland holding is applying both grazing and non-grazing livestock manures to the holding during the relevant period, the calculation also makes provision for the application of both to be adjusted on a pro-rata basis.

Regulation 4A(2) provides that where an occupier of a qualifying grassland holding intends to apply to the holding, during the relevant period, a total amount of nitrogen in grazing livestock manure which exceeds 170kg multiplied by the area of the holding in hectares, they must comply with additional enhanced nutrient management requirements established under Schedule 1A (enhanced nutrient management requirements) and notify Natural Resources Wales ("NRW"). Regulation 4B (notice requirements) sets out the notice requirements that the occupier of a qualifying grassland holding must comply with when notifying NRW.

Regulation 6 makes minor amendments to regulation 14 (spreading organic manure near surface water, boreholes, springs or wells) of the 2021 Regulations to assist with clarity.

Regulation 7 replaces references to "NRBW" with references to "NRW" wherever they occur in the Regulations. This is in consequence of replacing the definition of "NRBW" with "NRW" under regulation 3.

Regulation 8 inserts a new Schedule 1A (enhanced nutrient management requirements) into the 2021 Regulations which sets out the additional enhanced nutrient management requirements to be met by an occupier of a qualifying grassland holding if the occupier intends, during the relevant period, to apply to the holding a total amount of nitrogen in grazing livestock manure which exceeds 170kg multiplied by the area of the holding in hectares.

Regulation 9 revokes the Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) (No. 3) Regulations 2023, which were due to come into force on 1 January 2024.

The additional enhanced nutrient management requirements set out in these Regulations will apply to occupiers of qualifying grassland holdings in addition to the requirements which already apply to such occupiers by virtue of Parts 2 to 7 of the 2021 Regulations. Also, any occupier of a holding failing to comply with these additional requirements during the calendar year 2024 will be guilty of an offence and liable on summary conviction, or on conviction on indictment, to a fine, as is provided for under regulation 46 of the 2021 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

Three points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### **1. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In the Schedule, in the new Schedule 1A, in paragraph 1, there is a difference between the English and Welsh texts. In the English text, it refers to “the occupier of a qualifying grassland holding”, but this has been translated as meaning “the holder of a qualifying grassland holding”. Elsewhere in the existing Regulations and in the new amendments, the Welsh text has correctly used “meddiannydd” (“occupier”) rather than “deiliad” (“holder”) as the translation of “occupier”.

### **2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

In the Schedule, in the new Schedule 1A, the structure of paragraph 10 is incorrect as it opens with “10-(1)”. This creates an expectation in the reader that the sub-paragraph (1) will be followed by a sub-paragraph (2). But there is no sub-paragraph (2) so it should be structured as “10” rather than “10-(1)”. An example of a correctly structured provision is seen later in paragraph 20.

### **3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

In the Schedule, in the new Schedule 1A, in paragraph 11(2), there is a reference which is incorrectly described as “paragraph (1)(a) or (b)”. But the reference should be correctly described as “sub-paragraph (1)(a) or (b)” (see the relevant guidance about composite references in *Writing Laws for Wales* 6.16).

## Merits Scrutiny

Two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

### **4. 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.**

We note the following in part 5 of the Explanatory Memorandum in relation to consultation on these Regulations:

*“26. The Welsh Government consulted formally on proposals to introduce a licensing scheme for farm businesses to work to an annual nitrogen holding limit, from grazing livestock manures, of 250kg/ha, subject to crop need and other legal considerations. The consultation ran for 12 weeks from 25 November 2022 to 17 February 2023.*”



27. On 10 October 2023, we published a summary of responses to the formal consultation. This, along with the consultation document can be found at: <https://gov.wales/nutrient-management-managing-application-livestock-manures-sustainably>

28. As the Regulations provide a time-limited amendment similar to the proposals previously consulted upon and do not reflect a change in the Welsh Government's policy, a further formal public consultation did not take place."

**5. 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.**

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 AS/MS Minister for Rural Affairs and North Wales, and Trefnydd in a [letter](#) to the Llywydd dated 15 December 2023.

In particular, we note the following explanation:

*"The reason for not adhering to the 21-day convention in this case is that if the Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) (No. 4) Regulations 2023 do not come into force on or before 31 December 2023, then the Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) (No. 3) Regulations 2023 will come into force on 1 January 2024 without maximising legal clarity, accessibility, and certainty for end users regarding the combined application of manures from both grazing and non-grazing livestock."*

## Welsh Government response

A Welsh Government response is required in relation to reporting points 1, 2 and 3.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**21 December 2023**

