



Llywodraeth Cymru
Welsh Government

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Response to the Review of Nitrate Vulnerable Zones in Wales



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Introduction

Purpose of Consultation

On the 23 December 2011 the Welsh Government published a consultation on the review of Nitrate Vulnerable Zones in Wales. The EC Nitrates Directive (91/676/EEC) is intended to reduce water pollution caused by nitrates from agricultural sources and to prevent any further pollution. The Directive is transposed in Wales by the Nitrate Pollution Prevention (Wales) Regulations 2008. Since the introduction of the Directive in 1991, Member States are required to assess and designate areas as Nitrate Vulnerable Zones (NVZs) and produce an Action Programme of measures to reduce levels of nitrogen entering watercourses.

Consultation period and distribution

The Welsh Government consultation ran for a 12 week period from 31 October 2011 to 16 March 2012. The consultation was sent to a wide range of stakeholders and published on the Welsh Government web site.

Next Steps

The Welsh Government will continue to work with key stakeholders on the implementation of the proposals and will be communicating any changes brought about as a result of the review.

It is our intention for the new Regulations to come into force on the 1 January 2013.

Consultation responses

The consultation document focussed on both the designation of NVZs and the Action Programme to be applied in these areas. A total of 25 responses were received from both individuals and a variety of organisations. A breakdown of responses is as follows:

- Regulators – 3
- Assembly Members – 2
- Farming Unions – 3
- Individual citizen – 3
- Farmers – 3
- Water Company – 1
- Charity – 2
- Community Council – 1
- Consultant – 1
- Farmer and Agricultural Association – 4
- Business - 2

Background

The Government response to question 1 was issued on the 1 May 2012. This document refers to questions 2 to 39

Member States are required to review their implementation of the Directive every four years. The outcome of the review is used to make appropriate amendments to the NVZs and/or the measures in the Action Programme. The last review undertaken by the Welsh Government in 2007 resulted in the designation of 2.3% of the land area of Wales as Nitrate Vulnerable Zones and introduced a strengthened range of measures in the Nitrates Action Programme that farms located within NVZs must implement to comply with the Directive.

List of Respondents

1. Drinking Water Inspectorate
2. Environment Agency
3. D. T. Jones & Son
4. Tennant Farmers Association
5. Antoinette Sandbach AM
6. Pen-Y-Bryn Farm
7. Kirsty Williams AM
8. Clerk, Llangorse Community Council
9. Central Association of Agricultural Valuers
10. Crickie Farm, Llangorse
11. Country Land & Business Association
12. Welsh Lamb & Beef Producers Ltd.
13. Brecon & Radnor Branch of the Farmers Unions Wales
14. Marine Conservation Society
15. Dŵr Cymru Welsh Water
16. RSPB
17. Countryside Council for Wales
18. Permastore Tanks & Silos
19. 4R Environmental Consultants
20. Dairy UK
21. NFU Cymru
22. Farmers Union of Wales
23. David Nattress
24. Mr D Gatehouse
25. Richard Roberts

Analysis of responses and Government response to questions 2-39

Q2. Do you have comments on the areas proposed for designation as NVZs in Wales shown on the indicative maps (at Annex 2) given the Nitrates Directive's basis on which nitrate polluted waters must be identified and land draining into those waters must subsequently be designated?

19 responses were received to question two. 12 respondents specifically commented on the proposed designation of Llangorse Lake with the majority calling for the lake to not be considered for designation. One respondent questioned the proposed designation of an area near Wrexham whilst one respondent felt that a number of other areas should be designated.

Respondents also raised concerns regarding the communication of the consultation to those affected landowners and the quality of the maps included in the consultation.

Government Response

All areas proposed for designation in the consultation document were included as there is evidence to suggest that they may be polluted by nitrates from agricultural sources. This followed a review undertaken by the Environment Agency on our behalf. The review used the best evidence available and followed the review methodologies agreed by the methodology review group. These methodologies are available on the Environment Agency website.

Landowners affected by the proposed designations are able to appeal against these designations with the appeals being heard independently by the Planning Inspectorate (PINS).

Q3. How do you think the proposed Action Programme changes will impact on the practical management of typical farm enterprises in the new or existing zones?

Five respondents provided comments to question 3. Respondents were concerned about the impact of additional storage requirements for existing and newly designated farms, especially if no aid is made available to assist farmers to meet these costs. It was considered that this would risk loss of revenue through destocking, a reduction in competitiveness and may result in farmers changing sectors. Clear guidance, flexibility and the re-introduction of the livestock manure-nitrogen limit derogation was called for.

Government response

The Welsh Government remains committed to improving the efficiency of on-farm use of sources of nitrogen to reduce losses from agriculture identified as detrimental to water quality and biodiversity in accordance with our obligations under the Nitrates Directive. The purpose of the consultation is to make sure that these

objectives are met through improvements to the Action Programme measures, which also ensure an economically viable farming industry is maintained.

The Welsh Government's responses to other impacts respondents have commented on are detailed in the relevant sections below.

Contribution of all organic materials to Nmax

We proposed that the nitrogen in all organic manures should be included in the Nmax calculation.

Q4. Do you agree that crop available nitrogen from other organic materials should count towards the Nmax limits?

Nine respondents were in agreement with the proposal, while 2 were against and 14 did not respond to the question.

Those agreeing with the proposal highlighted the benefits of more efficient utilisation of nitrogen sources and an approach which has greater clarity and consistency. Respondents commented that more accurate calculations would reduce the risk of nitrogen being applied in excess of the crop requirement and so reduce the likelihood of pollution.

Of the respondents rejecting the proposal, one raised concerns that by not including non-farm wastes in the Nmax calculations farmers are encouraged to recycle such wastes on their farms. This was viewed as a risk to Welsh Government policy and targets for recycling. Another respondent viewed the proposal as gold plating the requirements of the Nitrates Directive and contradicting the Independent Working Smarter Report recommendations.

Government Response

The logic of increasing the accuracy of calculating the amount of applied nitrogen to ensure only the optimum nitrogen requirements for the crop is applied was agreed by most respondents. This will reduce the risk of pollution events and lead to more efficient use of resources.

The inclusion of all organic materials in the Nmax calculation equates to good farm practice and will assist farmers in achieving efficiency in the utilisation of sources of nitrogen available to them. The Welsh Government believes that there is no conflict with the recommendations of the Independent Working Smarter Report, as the inclusion of all organic materials in the Nmax calculation will provide clarity and a more logical approach. While all organic materials would need to be included in Nmax calculations, safe waste recycling would not be prevented.

The Welsh Government intends to implement the proposal and will work to ensure that guidance is available to farmers to minimise the burden of making the necessary calculations. The Farmers' Workbook - templates for Plans, Calculations and Record Keeping will be revised and provided to all farmers affected by designation. The provision will come into effect on 1 January 2014.

Livestock manure nitrogen efficiency standard values used in Nmax

We proposed to increase the manure nitrogen efficiency values for cattle and pig slurries to ensure that all crop available nitrogen is taken into account when considering nitrogen plans, and to encourage the uptake of good practice.

Q5. Do you agree with the proposed changes to the nitrogen efficiency standard values used in Nmax?

Q6. What concerns or benefits do you think this change may raise?

Five respondents directly opposed the proposal and one indicated rejection of the proposal by questioning the validity of the scientific justification. Another two respondents, while not rejecting or supporting the proposal, stated that the proposal should only be adopted if the supporting scientific evidence is robust.

Of the respondents objecting to the proposal, concerns were raised over the confusion caused by a change in the values, which could also place greater restrictions on the ability of farmers to spread slurry on crops. The scientific evidence was also questioned by respondents rejecting the proposal.

Three respondents were in agreement with the proposal, with responses highlighting that the proposal was a reflection of the latest scientific data, has the potential for significant cost savings and will ensure a more consistent approach.

Government Response

The Welsh Government is content with the scientific data available and that this data is applicable to farming in Wales and, therefore, intends to implement the proposal. The adoption of the proposed efficiency standard values will mean that farmers in Wales will be able to more fully recognise the contribution of nitrogen from slurry and manures. The new values will increase the efficiency of nitrogen use and present cost saving opportunities by reducing the need for supplementary manufactured nitrogen fertiliser.

The Welsh Government recognises that farmers will require support to adapt to this change. A transitional period will be provided to provide farmers time to plan and adjust, with the proposal coming into force on 1 January 2016. Support will be offered to farmers by providing advice to enable them to achieve greater efficiency in the use of organic fertilisers, such as through the subsidised Farming Connect Farm Advisory Service.

Farmers in Glastir will also be able to apply for entry into Glastir Efficiency Grants (previously known as the Glastir Agricultural Carbon Reduction and Efficiency Scheme (ACRES) scheme prior to 3 July 2012) for capital support. The Priority Catchments for Glastir Efficiency Grants will be revised to include all land designated as a NVZ. Workbooks and guidance will be provided to all farmers whose land is designated which will be designed to make the new values clear and minimise any confusion caused by the change.

Organic manure nitrogen field limit for composts

We proposed to allow the application of green composts to supply up to 500kg/ha of total nitrogen in any two year period.

Q7. Do you consider the limit of 500kg/ha of green compost total nitrogen in any 2 year period is workable?

Q8. Are there any working restrictions we should consider to ensure we are not creating any unintended adverse consequences?

Ten respondents were in agreement with the proposal, while 15 gave no response to these questions.

Comments provided included that there is a risk of long-term oversupply of nitrogen due to repeated applications of material with low mineralisation rates and nutrient composition and the rate of release of nutrients will vary.

It was also highlighted that the differing application limits for different composts would create additional complexity for farmers, while some respondents proposed additional provisions for other materials with low available nitrogen.

Government Response

The introduction of the proposal will proceed as no arguments against it have been provided. The need for long term nutrient management planning and the potential for nitrogen oversupply related to consecutive applications are recognised. The Welsh Government will give consideration to addressing these issues in the development of the regulations and guidance.

While it is recognised that implementation of the provision will lead to an increase in the complexity of the regulations and guidance the Welsh Government believes the benefits of increased flexibility for farm management outweigh this concern.

Organic manure nitrogen field limit for composts used as mulch

We proposed to change the organic manure nitrogen field limit for compost used as a mulch for top fruit production to 1000kg/ha of total nitrogen in any 4 year period.

Q9. Do you agree that a limit of 1000kg/ha of compost total nitrogen in any 4 year period when used as mulch for top fruit production is workable?

Q10. Do you have concerns about and/or can you identify benefits from such a change?

Responses provided to questions 9 and 10 replicate those provided to questions 7 and 8. Eight respondents were in favour of the proposal while 17 did not provide a response.

Government Response

The reported benefits of the use of green compost as mulch, including greater uptake of nitrogen by the crop, increased crop productivity and low risk of nitrate leaching are clearly welcomed by the support given to the proposal. The implementation of the proposal is therefore intended. As per the Government Response to questions 7 and 8, the need for long term nutrient management planning and the potential for nitrogen oversupply related to consecutive applications are recognised and will be addressed.

Derogation from the livestock manure-nitrogen farm limit of 170 kg total N/ha/annum

We proposed to negotiate with the European Commission for a further four year extension of the derogation.

Q11. What are your views as to whether or not the Derogation should be renewed?

Thirteen respondents responded positively to the proposal. One respondent opposed the renewal of the derogation and 12 did not comment.

Of those in favour of a renewal of the derogation some agreed that although uptake has previously been low, there are many farmers who are likely to want or need to apply and the opportunity should be provided to those newly designated. The burden of administration and record keeping requirements has been raised as a barrier to uptake.

Government Response

As the majority of responders are in favour of the renewal of the derogation, the Welsh Government will continue to pursue the request. Wales, in conjunction with England and Scotland, have already been working to secure the derogation in anticipation of a positive response to this question.

In line with the comments received on the administrative burden, recommendations of the Working Smarter report and as outlined in the consultation document, work will be undertaken to minimise administrative requirements.

Closed periods for organic manure

We proposed the 3 options below on the premise that the construction of additional storage capacity should not be required on farms that are already designated.

Option 1 - Keep the existing closed periods

Option 2 - Extend the end of the closed period by two weeks for all soils other than sandy or shallow soils

Option 3 – Extend the closed period by one month for all soils other than sandy or shallow soils.

Q12. Which of the three closed period options do you prefer?

Q13. Do you have any comments or further evidence on any of the options that you think the Welsh Government should be aware of?

Ten respondents were in favour of Option 1. One respondent preferred Option 3. Fourteen did not comment.

Comments were provided that extensions of the closed periods are of little need given that improvements in water quality can be attributed to the current action programme. Disappointment was expressed by one respondent that there was no proposal for manures with low-available nitrogen to be included in the closed period as evidence is available indicating that high volume injection results in an increased risk of pollution. Improved manure management by farmers, especially through active use of manure management plans, was suggested as an approach which should be adopted.

As recognised by the consultation paper, extended closed periods were identified by respondents as reducing the period available to farmers to spread on key crops, which has the potential to reduce spare storage capacity. Where insufficient storage is available there is an increased risk of pollution events. This was reported as problematic for tenant farmers who face additional difficulties in fulfilling storage requirements.

One respondent highlighted that the effectiveness of the Action Programme would be greater if a targeted approach was adopted, with measures targeted to areas according to soil type, farming systems etc.

Government Response

The Welsh Government believes that, on balance, the evidence available indicates that an extension of the closed period for applications to medium/heavy soils will lead to an overall reduction in pollution, while also minimising 'pollution swapping'. An increase in the closed period of two weeks for these soils will minimise any negative implications for operational flexibility and should not require additional storage to be constructed by those farmers who have built or extended stores to comply with previous regulatory requirements.

It is recognised that an extension of the closed period does risk reducing spare storage capacity and, therefore, in prolonged periods of wet weather, insufficient storage. Farmers in Glastir will be able to apply for Glastir Efficiency Grants, previously Agricultural Carbon Reduction and Efficiency Scheme (ACRES), which will enable farmers to address the risks posed by wet weather. Grants are available through the scheme to assist investment in new technology and equipment, for example, rainwater separation, slurry separators and roofs over slurry stores. The new closed periods will apply from 15 October 2013 for farms designated in 2009 and 15 October 2015 for those designated in 2013.

Rainfall Banding

No proposal was made in relation to rainfall banding but views were asked for.

Q14. What are your views on whether the Welsh Government should consider bringing forward by two weeks the end of the closed period for sandy/shallow soils in areas with up to 750 mm average annual rainfall per year (to 15 December for both grassland and arable)?

Three respondents rejected adding flexibility to the closed period to reflect rainfall, 5 respondents were in support of adding such flexibility and 15 respondents did not provide a view. Two respondents favoured a more targeted Action Programme, with a catchment based approach taking into account farming system, climate and soil type.

The added complexity and risk of confusion by adopting a flexible approach, as well as the variability of rainfall and forecasting inaccuracies were provided as reasons why rainfall banding should not be implemented in Wales.

Government Response

While the Welsh Government was not consulting upon the implementation of a proposal, views of stakeholders were asked for to inform future discussion on this issue, if it is considered beneficial. The alternative suggestions of measures tailored to discrete designated areas have merit, and certainly meets with the recommendation of the working smarter report for the tailoring of the Action Programme. The administrative burden, complexity and the potential for confusion caused by such an approach is believed to outweigh the benefits at this time. However, the Welsh Government will give consideration to this approach prior to the next Action Programme review, to further assess the viability of catchment based measures in Wales.

Restrictions on manure applications outside the closed period

We proposed to limit the amount of slurry that can be spread between the end of the closed period and the end of February to 30m³/ha of slurry and other liquid manures with high readily available nitrogen in a single application if ground conditions are suitable. This would still require a three week period between each individual application.

Q15. Do you think that reducing the quantity of slurry that can be spread immediately after the closed period is a better or worse mechanism for managing nitrate leaching than extending the closed periods?

Q16. If the application rate during this period were reduced, do you agree with the suggested reductions in the rate of application?

Q17. What further points should the Welsh Government take into account when considering this issue?

Five respondents were accepting of the proposal to reduce the quantity of slurry farmers are able to spread immediately after the closed period. Of these, 4 stated that the proposal should only be introduced as an alternative to an extension of the closed period. 4 respondents did not agree with the introduction of additional limits, while 14 did not comment and 1 respondent preferred a catchment based approach.

Four respondents were in favour of the proposed application rate, 3 did not agree with the proposed rate and 18 did not provide a response or did not indicate either way.

Respondents agreed that the approach would need to be based upon scientific evidence. Many respondents were concerned that there was the risk that a reduction in the limit that can be spread following the closed period would increase the risk that farmers would have reduced storage capacity. Respondents commented that the introduction of the proposal may result in later applications which could lead to grass contamination and that greater flexibility during closed periods would have greater environmental benefits. One respondent added that the spread risk assessments should identify land to which manures can be safely applied to following the closed period, which should be sufficient to reduce the risk of pollution.

Government Response

While the proposal was intended as an alternative to extended closed periods, the Welsh Government believes that the introduction of limits for spreading following the extended closed period still has merit. There is evidence to show that 30m³ per hectare is the approximate standard application rate and allows sufficient spreading to facilitate an overall reduction of stored slurry. This means that storage capacity, in the majority of cases, will not be compromised. This approach is also seen as a more practical alternative when compared to a greater extension of the closed period. The 30m³ per hectare will be implemented with effect from 1 January 2014.

Applying organic manures & manufactured nitrogen fertiliser

We proposed to allow farmers to spread organic manures to within 6 metres of surface water if using more precise spreading techniques including band spreading (trailing hoses and shoes) and shallow injection.

Q18. Do you agree with the proposals to reduce the minimum distance for spreading slurry near watercourses if more precise equipment is used?

Q19. Is the proposed minimum distance from watercourses (6 metres) correct, or does it pose an unacceptable risk of pollution?

Q20. Do you have any comments on how this proposal could work or be improved?

Nine respondents agreed that the proposal should be introduced. Two disagreed with implementation of a reduced buffer strips. Fourteen respondents did not provide a response.

Of those respondents agreeing in principle to the implementation of the proposal, a high proportion referred to need for the proposal to integrate with cross-compliance rules and the Code of Good Agricultural Practice. The need for appropriate controls was raised as a matter to be addressed to ensure that pollution risks are minimised, for example on sloping land. It was reasoned by one respondent that with appropriate controls the implementation of the proposal would encourage more efficient use of nitrogen and help higher Manure Nitrogen Efficiency standards to be achieved. Grants to incentivise the purchase of new machinery was suggested as a mechanism to encourage precision spreading.

One respondent rejecting the proposal referred to research indicating that the effectiveness of buffer strips are dependant on a number of factors, such as vegetation type and soil type. It was argued that the current spreading distance provides greater protection in the event that other factors combine to increase the risk of pollution. The respondent mentioned the particular risks of field drains.

Government Response

Given the proposal has been agreed by the majority of respondents indicating a preference, the Welsh Government intends to pursue implementation of reduced buffer strips for those using precision equipment. As outlined in the consultation, the proposal will be implemented by inclusion of a definition of precision spreading equipment and techniques. Precision spreading will minimise the risk of pollution as well as ensuring crop needs are met by improving the efficiency of nitrogen usage. There is also a cost benefit to the efficient use of nitrogen due to increased yields and reduced need for manufactured fertilisers. Grants can be provided for low trajectory slurry spreading equipment through Glastir Efficiency Grants or Option 14 of Glastir Entry.

Concerns raised by stakeholders about the increased risk of pollution created by spreading closer to water bodies will be addressed by the introduction of appropriate measures. The Welsh Government will work with stakeholders develop adequate controls to minimise the risk of pollution caused by the introduction of the proposal.

Calculating the capacity of storage vessels

We proposed standardising the calculation of storage capacity to that of the NVZ Action Programme method for all farmers to remove the duplication and simplify compliance with both sets of Regulations.

Q21. Do you agree with this proposed change to the SSAFO calculation? What other factors should be considered?

Ten respondents opposed the introduction of the new calculation and 2 were in favour. Assurances were sought from one respondent that any increase in storage needed, due to the new calculation, would only be required if improvements were being undertaken. Twelve respondents did not comment.

Those disagreeing with the proposal referred to the lack of evidence available to support the need for increased storage requirements outside Nitrate Vulnerable Zones. Information was provided that pollution events related to manure management are, in the vast majority of cases, related to significant storage deficits, rather than on farms where the four months storage requirement under the SSAFO regulations has been met.

The financial burden for farmers outside of NVZs was given by the majority of respondents rejecting the proposal as the reason for doing so. The divergence from the recommendations of the Working Smarter report was also highlighted in objections to the proposal.

An alternative of aligning the SSAFO storage calculation with the NVZ regulation calculations was proposed by 2 respondents, while the minimum storage requirements under both should remain the same, 4 and 5 months respectively.

Government Response

The Welsh Government is persuaded by the arguments provided in favour of rejecting the proposal. In the absence of sufficient evidence to indicate that stores compliant with SSAFO regulations pose a significant pollution risk to the environment, it would not be prudent to amend the calculation, in a manner which could lead to increased costs for the industry and would conflict with the Working Smarter report recommendations.

Given the aim of the proposal to reduce the regulatory burden placed upon farmers in Nitrate Vulnerable Zones by simplifying the storage requirement calculation, the alternative suggestion proposed will be given further consideration.

Storage of solid livestock manures in field heaps

No changes were proposed to the Action Programme requirements relating to field heaps.

Q22. Do you agree that the Action Programme does not require any amendments with respect to the storage of solid livestock manures?

Ten respondents were in agreement with the proposal, while 15 did not provide a response.

The importance of field heaps to farming practices in Wales, as stated in the consultation paper, was echoed in a number of the responses. Concerns were raised about alternative options, such as manure stores with impermeable bases.

Two respondents discussed the need to minimise connectivity between manure heaps and watercourses, for example through the retention of topsoil.

Government Response

The Welsh Government is committed to minimising or reducing rules where possible as part of the review of Nitrate Vulnerable Zones. However, it does recognise the concerns raised by respondents that where there is hydrological connectivity to the field heap, there is a risk of environmental pollution. Where this connectivity can be reduced with minimal burden to the farmer, the Welsh Government intends to introduce guidance to lessen the risk. It is therefore intended that additional guidance on the storage of solid livestock manures in field heaps will be introduced, which will have minimal impact upon farming practices. We are currently considering the following rules which would be introduced from 1 January 2014:

The surface area of field heaps should be as small as possible to minimise the leaching effect of rainfall.

Field heaps should not be constructed within 30 meters of a watercourse on land identified in the risk map as having a slope of 12° or more.

Topsoil should not be removed from the ground on which a field heap is to be constructed.

Nutrient Management Planning and Record Keeping

We sought to explore 'earned recognition' and 'polluter pays' principles, such as reduced inspections for those with nutrient management planning and record keeping exemptions for farming systems where the cost of compliance would be disproportionate compared to the environmental benefit.

Q23. How do you think the Welsh Government could enact the earned recognition principle?

Q24. How else do you think the record keeping burden could be reduced whilst maintaining the environmental benefits of the Nitrates Directive?

Q25. What low intensity farming systems do you consider should not have to keep Nitrates Regulations records?

Q26. Should “low intensity” be defined in terms of the Nmax limit, manure nitrogen applications, or both? Or should other factors be part of the definition (and if so, what are they)? For your preferred way of defining “low intensity”, what level(s) of the relevant measures would be appropriate?

Q27. Are there any situations where the above should not apply?

Of those responding to the proposition of applying earned recognition to the implementation of the Nitrates Directive, 9 respondents were in favour of adopting the proposal in principle and 2 against. Fourteen respondents did not provide any views.

A common theme in the responses by those agreeing to the principle of earned recognition was that it should apply to those who are able to demonstrate that the risk of pollution is minimal, in line with the ‘polluter pays’ principle. The approach adopted by some member states to exempt small farms from record keeping requirements was rejected with the reasoning that small farms can be just as polluting as larger farms. It was argued that smaller farms may pose an even greater risk due to limited funds available for innovation and expenditure on capital items.

The principle of removing the duplication of records was agreed by most of those in favour of earned recognition where, for example, the land is within a farm assurance scheme and the record keeping requirements of that scheme are sufficient to fulfil the requirements of NVZ rules. Reduced inspections for those completing nutrient management plans using NVZ compliant software packages or alternatives were also viewed to have some merit, although the effect this would have on reducing the burden of record keeping was questioned.

One respondent argued that if record keeping requirements are beneficial to the farmer, such as a requirement to determine the correct amount of nitrogen to be applied to fulfil the crop requirement, both the farmer and the environment will benefit. The respondent indicated that where record keeping requirements are overly complex, the behavioural change the requirements are designed to achieve would be lost.

Respondents in favour of earned recognition, and one of those who was not, responded to the question of what low intensity farming systems should be exempt from NVZ record keeping requirements. The general consensus was that only extensive hill and grassland systems with no arable land would be sufficiently low risk to warrant exemption. One suggestion offered as to the criteria against which

farms should be measured was two thirds of the Nmax or whole farm manure loadings.

Government Response

The views of the Welsh Government, in relation to earned recognition and record keeping exemption, broadly mirror the consensus of opinion and therefore the approach intended reflects this. It is intended that a reduced inspection priority will be applied to those farmers completing full nutrient management plans, so that the number and/or intensity of inspections will be directed to those farms at greater risk of polluting the environment. This means that inspections will be more efficient and that farmers who embrace nutrient management will be rewarded.

The Welsh Government also intends to remove the record keeping obligations outside of the Code of Good Agricultural Practice for farmers who apply nitrogen at low levels. An exemption will be available for extensive farming systems with a high proportion of grassland. The following conditions, which would all need to be met, are being considered as necessary for exemption:

1. 80% or more of the farm is grassland; and
2. Overall livestock manure N applications are less than 100kg/ha; and
3. Manufactured N applications are less than 90kg/ha.

Keeping records – removing duplication

We proposed to exempt those in farm assurance schemes from the need to keep records, where the record-keeping required by the quality assurance scheme would show compliance with the Nitrates Regulations, or the application of fertilisers was at a level low enough to ensure compliance with the Nitrates Regulations.

Q28. Do you agree in principle that certified organic farms should not have to comply with the record keeping requirements of the Nitrates Regulations?

Q29. What other quality assurance schemes are you aware of that keep sufficient records to enable exemption from the need to keep Nitrate Regulations records? We would be interested to discuss suggestions with those responsible for running such quality schemes.

Seven respondents replied that record keeping requirements should not be required under NVZ regulations where they are duplicated in other schemes. Two respondents objected to the proposal and 16 did not respond.

The reasons provided for objecting to the proposal included that the pollution events are not dependant on whether the organic material is certified as organic or not and that while organic farmers may be more diligent with manures this does not provide sufficient argument for exemptions to apply.

Other schemes which may keep sufficient records to fulfil the requirements of the Nitrate Regulations were provided and included the Farm Assured Welsh Livestock Ltd. Beef and Lamb Scheme (FAWL); supermarket schemes; Quality Welsh Food Certification Ltd (QWFC); and Environmental Permitting Regulations PAS100/PAS110 schemes.

Government Response

As indicated in the previous Government response, consideration is being given to record keeping exemptions for land which is within a farm assurance scheme, where the record keeping requirements and inspection regime scheme are sufficient to meet the requirements of the Nitrates Regulations. The implementation of the proposal will be limited to reducing the duplication of record keeping, rather than removing obligations for some sectors.

Cover Crops

We proposed to introduce a requirement to ensure cover crops on sandy soils over those areas designated as groundwater NVZs, where the ground would otherwise be left bare over winter.

Q30. Do you think cover crops should be included in the Action Programme?

Q31. If so, have we identified the correct circumstances (sandy soils over groundwater) for their use?

Q32. Are the suggested dates appropriate? If not, what dates would you suggest?

Q33. What actions do you consider should be defined to show compliance?

Nine respondents opposed the introduction of cover crops as a mandatory provision of the Action Programme. One respondent was in favour of the inclusion of cover crops and 16 did not comment.

Comments provided by those against the implementation of the proposal included the potential of existing stubble regeneration as a mechanism for removal of nitrogen from the soil as an alternative to purpose grown crops and that greater benefits could be achieved by improved soil preparation to reduce run-off. The proposal was considered to be 'gold-plating' the requirements of the Nitrates Directive as their inclusion in the Action Programme is not a mandatory requirement of the Directive. Two respondents highlighted that cover crop management options are provided for in Glastir All-Wales Element.

No responses were provided as to whether the proposal correctly identified the most beneficial use of cover crops on sandy soils over groundwater. However, a suite of locally applicable measures was suggested as an alternative approach. No alternative dates were proposed for the establishment of cover crops. Seed invoices or other evidence of the establishment of the crop, such as a contractor bill, were presented as methods to evidence compliance.

Government Response

The Welsh Government recognises that there is the potential for a significant reduction in leachate from the use cover crops. However, within areas where the use of cover crops would be of most benefit, wet weather may reduce the effectiveness of such a measure, which may also interfere with farm practices. The Government has accepted the recommendations of the Working Smarter report in relation to 'gold plating' and is committed to avoiding over-regulation. While there is a cost in the establishment of cover crops, these are considered to be outweighed by the benefits, especially where groundwater is protected and cost effective measures are adopted, such as using the crop for grazing.

On balance, the Welsh Government is content that operational incentives for the use of cover crops, such as grazing and reduced soil erosion, should be sufficient to encourage the use of cover crops where appropriate. Glastir further incentivises the use of cover crops with options available in Glastir Entry.

Regulation 6 exemption

We proposed the repeal of the exemption for slurry stores built before 1 March 1991, or stores for which irreversible commitments had been made by that date, from the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (Wales) Regulations 2010.

Q34. Do you agree that the exemption in Regulation 6 should be repealed?

Q35. Do you think the deadline for doing so (22 December 2015) is the right one?

Nine respondents were opposed to the repeal of the Regulation 6, which exempts slurry stores built or contracted before 1 March 1991 from the SSAFO regulations. Three agreed with the proposal, 11 did not comment and 2 agreed with the proposal where allowances could be made for those stores built or contracted prior to 1 March 1991, but which are in a satisfactory condition.

Respondents against the repeal of the exemption raised concerns that while stores may be coming to the end of their useful lives, this was not supported by hard data. While there is anecdotal evidence to indicate that farmers may avoid taking necessary refurbishments due to fear that they would then be required to build a larger store, respondents argued that there are many stores which are fit for purpose. Where this is the case, the financial burden created by repeal of the exemption was viewed as highly significant as well as disproportionate. Views on the transitional period ranged from agreement with the proposed deadline, 4 years, to 2021 to coincide with the River Basin Management Plan cycle.

Government Response

A common theme in the responses provided by those agreeing and disagreeing with the proposal was the need to ensure that where storage facilities would cease to be exempt, yet remained fit for purpose, they would not be required to be rebuilt. The Welsh Government remains convinced of the legitimacy of the proposal to address the risk older stores pose to the environment, but also recognise that this risk may not be apparent for stores not yet approaching the end of their service life.

The Welsh Government is also aware of the significant cost implications for farmers who would be affected by the implementation of the proposal. The benefits of a non-regulatory approach, with guidance and the provision of advice to farmers on storage requirements are recognised. It is intended that this approach will be taken until further assessment of the repeal of Regulation 6 has been undertaken.

Notification of storage

We proposed that during the planning phase of a new store (i.e. before irreversible decisions about site and construction method have been made) a farmer should be required to inform the EAW and failure to do so would be an offence.

Q36. Do you agree that a person constructing a store should notify the EAW of his/her intention to do so before firmly committing to the project?

Q37. How might we improve this provision?

Seven respondents agreed with the principle of notifying the Environment Agency of the construction of a new store at the planning stage. Three respondents disagreed with the proposal and 15 did not offer an opinion either way.

Comments provided by those rejecting the proposal said that a legislative requirement was not necessary, rather guidance and partnership working would suffice, and that the Environment Agency is already a statutory consultee in relation to planning applications with an environmental aspect. Respondents in favour of the proposal agreed that there is a potential cost saving to the farmer where it is identified that a store may not be compliant prior to the build stage.

Government Response

Providing the enforcement body with the opportunity to assess new stores at the planning stage will provide farmers with greater security and peace of mind that their new stores will be compliant with regulations, avoiding unnecessary and costly adjustments following construction. The Welsh Government views this as highly beneficial both from the farmers' viewpoint and for enforcement. In addition to a reduced risk of new stores failing to comply with regulations, there will be a reduced need for storage inspections where the enforcement body have been at the planning stage and prior to first use.

Though the argument that advice and guidance should be offered to farmers to notify the enforcement body at the planning stage is valid, the Welsh Government has the view that clarity will be provided through a legislative requirement to notify the enforcement agency at the planning stage. While this increases the administrative burden for those who would otherwise not notify the agency, red tape will be reduced considerably where compliance issues would otherwise be identified at a later stage. As the other proposals in the consultation relating to the SSAFO Regulations will not be implemented until further consideration has been given, it is intended that this change will be made to the regulations alongside other amendments when they occur. Therefore, the timescale for this amendment is not yet known.

Other Issues

Consultees were provided with the opportunity to raise other matters about the Action Programme.

Q38. We have asked a number of questions, but are there any other issues about the Action Programme you would like to raise?

Four responses were received to the above question. One respondent stressed the need for stronger mechanisms to ensure that transitional periods provided in the next Action Programme are used by farmers as an opportunity to attain compliance, as opposed to facilitating a period of inaction. Notice powers were suggested as an example of a mechanism which could be used to aid compliance with infrastructure requirements. The use of constructed wetlands for the sustainable management of slurry and 'dirty water' was suggested as a provision which could be added to the SSAFO Regulations. Revision of the SSAFO Regulations was called for due to changes in silage making practices.

One respondent raised concerns that the effect of nitrate leaching on environmental change is greatest in spring, when many species begin their growth cycle, recommending that the Action Programme should seek to minimise nitrate losses from fertiliser applications at this time of year. The respondent also emphasised the potential of less standard measures, such as sediment traps and reed beds, for more efficient and effective control of nutrients and sediments. A 'toolkit' approach was suggested as a better mechanism to achieve environmental gains at lower cost.

The approach of the Directive to link to calendar dates for specific measures was viewed by one respondent as unfavourable and not conducive to practical farming based on actual weather conditions and farming systems. The potential for a 'national slurry-spreading day' effect and the risks of this to water quality was recognised. An advance of the end of the closed period for farmers using precision slurry equipment which reduces the risk of runoff was suggested as a mechanism for reducing this risk.

Government Response

The transitional period provided by the current Regulations means that storage requirements only came into effect very recently. Transitional periods will again be provided for changes being made to the Action Programme for which farmers will need time to adapt. Workshops and other programmes of communication with farmers about the requirements of the Nitrate Regulations will ensure that they are fully informed. One-to-one communication will remain the preferred method of working with farmers to assist them to achieve compliance. To further incentivise uptake of the regulations and provide proportionate mechanisms to address non-compliance, where necessary to protect the environment, provision will be made to enable the enforcement body to serve notices to require works or precautions to be undertaken.

While there are a number of technical considerations related to the use of constructed wetlands, the Welsh Government is in favour of innovative approaches to waste management. Full consideration will be given to the inclusion of provisions for constructed wetlands as part of the review of the SSAFO Regulations. The review will also give consideration to updating the regulations to account for contemporary silage making practices.

The approach to the Action Programme has been lead by the requirements of the Directive and the scientific evidence. While there is an element of inflexibility in the Action Programme, for example the set closed periods, increased storage requirements have enabled farmers greater flexibility in the utilisation of organic nitrogen and so a reduced reliance on manufactured nitrogen. It is clear that farmers will need support to achieve compliance with storage requirements, especially those which are newly designated. Glastir Efficiency Grants will be available to support those farmers who require capital grants to enable works to be undertaken to achieve compliance. As per the Government response to question 14, consideration will be given to a targeted approach prior to the next Action Programme review, to further assess the viability of catchment based and other targeted measures in Wales.

Q39. Do you consider all the Action Programme measures should be implemented from 1 January 2013?

Six respondents disagreed with the proposed timetable. One respondent agreed to an implementation date of 1 January 2013 and 18 did not provide comment.

The reasons for objecting to the implementation date, included that a later implementation date would give more time for providing workshops, updated guidance, and that the current Action Programme should be allowed to settle in, especially as some rules have only recently come into force.

Government Response

The Welsh Government acknowledges that some of the changes to the Action Programme will require transitional periods. To enable farm businesses time to prepare in order to meet the forthcoming regulatory requirements, transitional periods will be provided as indicated in the responses above. Workshops, updated guidance and workbooks will be provided to those with designated land.

The Welsh Government will continue to work with key stakeholders on the implementation of the proposals.

It is our intention for the new Regulations to come into force on the 1 January 2013.