



Ein cyf/Our ref ATISN 13506

14 November 2019
Llywodraeth Cymru
Welsh Government

Dear

ATISN 13506 Cabinet Secretary announcement to introduce regulatory measures to tackle agricultural pollution (14 November 2018).

Thank you for your request which I received on 17 October 2019. You asked for:

1. Information on the assessment of evidence Welsh Government has undertaken in order to determine the closed periods in the proposed regulations.
2. Information on the assessment undertaken by Welsh Government of proposed new regulations in the context of the Working Smarter review of better regulation (2011) and specifically the recommendation that environmental regulation should be risk-based and targeted.
3. Information on the communications plan and associated ministerial advice, provided ahead of the announcement of 14 November 2018.
4. Information on the Welsh Government response to the Progress Report of the Wales Land Management Forum sub-group on agricultural pollution and its 45 recommendations. In addition, you have requested full details of any ministerial advice prepared in relation to the Progress Report.
5. Information on the investment plan to support the farming industry to comply with new regulation, together with detail of all communication with the Welsh Treasury in relation to the new regulations.
6. Information on all communications which have taken place with the Welsh Government Planning Directorate relating to the proposed new regulations. We request information on what assessment Welsh Government has undertaken of the planning system to facilitate compliance with the new regulations. In addition, information is requested on communications with the Local Planning Authorities across Wales to alert them to the new regulations.

I have considered this request under the Environmental Information Regulations.

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Rhodfa Padarn
Llanbadarn Fawr
Aberystwyth
Ceredigion
SY23 3UR

I have decided that some of the information is exempt from disclosure under regulation 12(4)(e) of the of the Environmental Information Regulations and is therefore withheld. The reasons for applying these exceptions are set out in full at Annex 1 to this letter.

The answer to your questions is as follows:

1. This information is being withheld under Regulation 12(4)(e) of the Environmental Information regulations.
2. Welsh Government does not hold any information with regard to this point.
3. This information is being withheld under Regulation 12(4)(e) of the Environmental Information regulations.
4. The Welsh Government response to the Progress Report of the Wales Land Management Forum sub-group on agricultural pollution and its 45 recommendations is at Annex 2 of this letter.
5. Welsh Government does not hold any information with regard to this point.
6. Welsh Government does not hold any information with regard to this point.

If you are dissatisfied with the Welsh Government's handling of your request, you can ask for an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to the Welsh Government's Freedom of Information Officer at:

Information Rights Unit,
Welsh Government,
Cathays Park,
Cardiff,
CF10 3NQ

or Email: Freedom.ofinformation@gov.wales

Please remember to quote the ATISN reference number above.

You also have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at:

Information Commissioner's Office,
Wycliffe House,
Water Lane,
Wilmslow,
Cheshire,
SK9 5AF.

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely

Annex 1

I have decided to withhold the following information:

Information being withheld	Section number and exemption name
1. Information on the assessment of evidence Welsh Government has undertaken in order to determine the closed periods in the proposed regulations.	Regulation 12(4)(e) – Internal Communications
3. Information on the communications plan and associated ministerial advice, provided ahead of the announcement of 14 November 2018.	Regulation 12(4)(e) – Internal Communications

Regulation 12(4)(e) – internal communications

This Annex sets out the reasons for the engagement of regulation 12(4)(e) - Internal communications of the Environmental Information Regulations and our subsequent consideration of the Public Interest Test.

Regulation 12(4)(e) states that a public authority may refuse to disclose information to the extent that—

(e) the request involves the disclosure of internal communications.

Guidance from the Information Commissioner has confirmed this exception is drafted broadly and is a class based exception which covers *all* internal communications, not just those that are sensitive or actually reflect internal thinking. The concept of ‘internal communications’ covers a wide range of information and includes any information intended to be communicated to others or saved in a file where it may be consulted by others. I can confirm the information held by the Welsh Government which is captured by your request amounts to internal communications. The information is for the Welsh Government’s own internal purposes and has not been shared externally.

Regulation 12(4)(e) is a qualified (public interest tested) exception. Even if the exception is engaged, public authorities must go on to apply the public interest test set out in regulation 12(1)(b). A public authority can only withhold the information if the public interest in maintaining the exception outweighs the public interest in disclosing the information. Because of this, consideration has been given to the effects of disclosure to the world at large rather than any personal interest you may have in being provided with the information.

The Welsh Government acknowledges the presumption in favour of disclosure under Regulation 12(2). It acknowledges the public interest in openness and transparency within Government, particularly by disclosing how the Welsh Government informs policy thinking, utilises its resources, spends public money and that both are invested wisely on behalf of the people of Wales.

In relation to this request, the information pertaining to the then Cabinet Secretary’s announcement is information which is still to be considered, at a future date, when the Minister will make a decision on whether to introduce regulations and the form any regulations will take. This is a matter of policy that remains under active consideration and development.

The information is clearly internal communications under the definition of the regulations. Welsh Government further believes disclosure of this information, at this time and before a decision is made by the Minister would not be in the public interest, as we believe releasing this information would prejudice the Minister's ability to make a timely decision.

Welsh Government has shared the proposed regulations with stakeholders through the Wales Land Management Forum sub-group and its related Regulatory Task and Finish group for the purpose of discussing the proposal, the evidence and the development of the Regulatory Impact Assessment. The minutes of those meetings are in the public domain and have been made available, along with the associated papers, to NFU Cymru which is a member of the sub-group. Welsh Government has also consulted on the proposals, information on which is also in the public domain.

Arguments against the proposal have been raised in consultation responses and in additional evidence, which has been made available to the Minister, including from the organisation submitting this request.

The internal communication between officials and the Minister forms the substance of the advice and assessment of evidence related to the Written Statement of 14 November 2018. The advice is currently being prepared, alongside further evidence, including that provided by NFU Cymru and other stakeholders, by the Minister. It is the nature of such advice that it contains a summary of the evidence and arguments received both for and against the policy in a full and frank manner, and this is why the process is conducted internally ahead of the decision of the Minister. This preserves the safe space in which the decision may be taken, giving due and fair consideration to all responses received, and without inviting a new round of responses and attempted rebuttals that might allow undue weight or influence of some parties over others.

The release of information regarding the further assessment of the closed periods would subvert this process and open Welsh Government to challenge over the fairness of the process.

The release of this information prior to a decision being made would also inhibit the free and frank exchange of views between government officials and Ministers for the purposes of deliberation.

Furthermore, in relation to question 3 of this request, the information requested on a Communications Plan is to be considered, at a future date. Welsh Government has informed stakeholders through the WLMF sub group we will work with them to develop a Comms Plan which will be subject to the Minister's approval. Until such time, this is a matter of policy that remains under active consideration and development.

The information is clearly internal communications under the definition of the regulations. Welsh Government further believes disclosure of this information, at this time and before a decision is made by the Minister would not be in the public interest, as we believe that releasing this information would prejudice the Minister's ability to make a timely and fair decision.

The Welsh Government believes the public interest in this matter is satisfied by the amount of information being released on other questions above, for which we do not believe there is a public interest for withholding the information. It is also satisfied by the information already in the public domain. Further, we note the public interest in favour of holding the above information is time limited, and we would be content to disclose this information once the Minister has been able to consider the matter appropriately.

Thus we believe the balance of public interest to withhold the information in parts 1 and 3 at this time outweighs the public interest to release it for the reasons outlined above.

ANNEX 2

Although our view is that the balance of public interest favours withholding of the information in questions 1 and 3 as above, we have considered the same public interest test against the balance of your request. Question 4 also captures internal communications, but our view is the release of the information captured by those parts of the request would not cause the same harms to the public interest in withholding the information, described above. The information captured under this question is therefore being released. The recommendations of the WLMF will be further considered by the Minister in making the decision on whether to introduce regulations.

The following advice was provided to the Minister in relation to the report:

The Wales Land Management Forum (WLMF) established a sub-group in January 2017 in order to focus on tackling agricultural pollution.

The membership of the group comprises NFU Cymru, Farmers' Union of Wales (FUW), Country Land and Business Association (CLA), Dwr Cymru Welsh Water (DCWW), the Tenant Farmers Association Cymru (TFA), Hybu Cig Cymru (HCC), AHDB Dairy, the Carmarthenshire Fishermen's Federation (CFF), Natural Resources Wales and the Welsh Government.

Lying at the heart of the work has been the development of a mutual understanding of the root causes of agricultural pollution. This preceded the identification of a range of approaches capable of driving environmental improvements.

The group's progress report, submitted to the Cabinet Secretary on 5 April, provides an update on the work of the WLMF sub-group on agricultural pollution over the last fifteen months. It follows on from the written statement on the Nitrate Vulnerable Zone consultation issued by the Cabinet Secretary for Energy, Planning and Rural Affairs in December 2017 – and represents a genuine co-production approach to the sustainable management of natural resources.

The report is presented in nine chapters. These cover the background to the work, the nature of agricultural pollution in Wales and the approach to tackling the problem. A total of 45 initial recommendations span the five work areas adopted by the group. Each of these work themes has a significant role and needs to be considered as part of an integrated package:

- **Ensuring that the formal regulatory regime is sufficiently robust to achieve the outcomes required;**
- **Developing a voluntary, farmer-led approach to nutrient management;**
- **Providing better advice and guidance which can then be taken up by farmers;**
- **Improving the existing range of investment opportunities;**
- **Identifying and promoting innovation.**

The report's recommendations are currently being considered by officials and further advice will follow in due course.

The Cabinet Secretary is invited to agree and sign the letter attached at Annex 1 for onward transmission to Zoe Henderson, Chair of the WLMF Sub-group on Agricultural Pollution.

Information contained in the letter referred to above is as follows:

Thank you for the progress report of the Wales Land Management Forum Sub-group on tackling agricultural pollution. While I am writing to you as the Chair of the group, I fully acknowledge the report represents joint working by a number of organisations.

It is clear a considerable amount of effort has gone into the production of your report. It contains numerous recommendations and some time will be required for these to be considered in full.

I welcome the work which has already been undertaken in targeting advice and guidance through Farming Connect in areas with water quality issues, aligned to interventions underway in other priority areas. The advice from the group on support through the Rural Development Plan to promote activities to protect water quality is also a positive step.

I am also pleased to acknowledge the efforts being made on communicating to the industry the need to address agricultural pollution issues, the impact they have and the actions that can be taken to address them. But more action is needed. The numerous accounts of slurry spreading during inappropriate weather conditions across Wales this year and the closure of Dolau beach, New Quay, over the Easter weekend highlight the need for farmers to take appropriate action to avoid pollution events. I am additionally concerned about the media coverage of agricultural pollution incidents over the last few months. The coverage is highly damaging to the reputation of the industry as a whole.

I maintain my commitment to work with you to seek the right balance between regulatory measures, voluntary initiatives and investment to tackle agricultural pollution.