



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref ATISN 13626

Dear

ATISN 13626: Environmental Information Regulations (2004) – Cabinet Secretary announcement to introduce regulatory measures to tackle agricultural pollution (14th November 2018).

Thank you for your request which I received on 2 December 2019. You asked for:

1. Information on all communications between the Minister and officials, in the period leading up to the announcement on 14th November 2018 and in the intervening period, on the proposed new regulations and, specifically, their likeness with the requirements of the EU Nitrates Directive and the NVZ Action Programme.
2. Disclosure of the advice and evidence requested and received by Welsh Government from Natural Resources Wales in relation to the proposed regulations.
3. Information for the whole of Wales under Article 5 of the EU Nitrates Directive (91/676/EEC) which states that NVZ Action Programmes shall take into account:
 - a) Available scientific and technical data, mainly with reference to respective nitrogen contributions originating from agricultural land and other sources;
 - b) Environmental conditions in the relevant regions of the Member State concerned.
4. Information on details of the advice provided by the Office of the Chief Veterinary Officer relating to the proposed regulations; specifically an assessment of the ability of farmers suffering a bovine TB herd breakdown and under bovine TB herd restriction to be compliant with the new regulations.

I have considered this request under the Environmental Information Regulations.

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

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

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

<p>1. Information on all communications between the Minister and officials, in the period leading up to the announcement on 14th November 2018 and in the intervening period, on the proposed new regulations and, specifically, their likeness with the requirements of the EU Nitrates Directive and the NVZ Action Programme.</p>	<p>Regulation 12(4)(e) – Internal Communications</p>
<p>2. Disclosure of the advice and evidence requested and received by Welsh Government from Natural Resources Wales in relation to the proposed regulations.</p>	<p>Regulation 12(4)(e) – Internal Communications</p>
<p>3. Information for the whole of Wales under Article 5 of the EU Nitrates Directive (91/676/EEC) which states that NVZ Action Programmes shall take into account:</p> <ul style="list-style-type: none"> a) Available scientific and technical data, mainly with reference to respective nitrogen contributions originating from agricultural land and other sources; b) Environmental conditions in the relevant regions of the Member State concerned. 	<p>Regulation 12(4)(e) – Internal Communications</p>
<p>4. Information on details of the advice provided by the Office of the Chief Veterinary Officer relating to the proposed regulations; specifically an assessment of the ability of farmers suffering a bovine TB herd breakdown and under bovine TB herd restriction to be compliant with the new regulations.</p>	<p>Regulation 12(4)(e) – Internal Communications</p>

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, both of which are chaired by Natural Resources Wales (NRW) 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 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.

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 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, 2, 3 and 4 at this time outweighs the public interest to release it for the reasons outlined above.