

Review of The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021

June 2022



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June 2022



About the Committee

The Committee was established on 23 June 2021. Its remit can be found at:
www.senedd.wales/SeneddEconomy

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Welsh Conservatives



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Chair's foreword

The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 are a controversial piece of legislation. They aim to improve water quality and protect nature from agricultural pollution, however many farmers view them as excessively onerous and worry that complying will be prohibitively expensive.

Plenary unanimously tasked the Committee with urgently reviewing these Regulations last year. However our report was delayed because of a judicial review into the legality of the regulations, which was rejected by the High Court.

This review has never been around the legality of the Regulations. The Committee has focused on the policy content and whether the Regulations will achieve the stated objective of the Welsh Government. To that end this Committee report makes some significant policy recommendations.

This review was one of the first pieces of work conducted by the Economy, Trade and Rural Affairs Committee. We are grateful to all those who responded to our consultation, and provided oral evidence on a set of Regulations which have strongly divided opinion and raised many concerns. The Committee has sought to be scrupulously fair and balanced in its consideration of the evidence put before us, and to make constructive recommendations on the significant policy implications of this new regulatory approach.

As Chair it was important to me that we treated seriously the Senedd's instruction to review the Regulations urgently, and the Committee has given this work a high priority. Unfortunately, the delay caused by the judicial review was out of the Committee's hands. I'm grateful to the Minister for Rural Affairs and North Wales, and Trefnydd, for attending Committee as soon as possible after the court judgement was handed down.

We now invite the Minister to give careful consideration to our findings. This includes moving quickly to review the effectiveness of alternative technological measures; to be fully transparent about the funding support available to farmers; to provide assurances that there is adequate resourcing and guidance for Natural Resources Wales to monitor and enforce; and to minimise

any unintended consequences for farmers, in particular tenant farmers and those affected by bovine TB breakdown.

Welsh Government should be reviewing the effectiveness of these Regulations as soon as possible, and the four year timescale for formal regulatory review should be no barrier to work starting immediately on improvements. The Wales Land Management Forum sub-group on tackling agricultural pollution made a significant suite of recommendations to Welsh Government and others, and the Committee looks forward to a fuller explanation of how all that work has been considered and taken into account.

We look forward to the Welsh Government's response to our recommendations, and expect we will keep returning to the issues raised in the review in the months and years ahead. The farming community in Wales, the environmental sector, our fishers and anglers, all those who are guardians of our Welsh land and waterways, will expect nothing less.



Paul Davies MS

Committee Chair

Recommendations

Recommendation 1. The Welsh Government should re-introduce the derogation which allowed qualifying grassland farms to spread up to 250 kg/ha of nitrogen.....Page 15

Recommendation 2. The Welsh Government should set out exactly what support has been, and will be, made available to farmers to meet the water quality and other various requirements of the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 - both financial support and advisory services. This should include the amounts, funding delivery mechanisms and timescales, and identify the resources given to and provided by Farming Connect. In doing so, Welsh Government should set out the research, evidence and calculations made to determine the support levels required and provided.....Page 30

Recommendation 3. The Minister should set out to the Committee her considerations of the impact these Regulations may have on the planning system, and how any unintended consequences of infrastructure improvement work relating to these regulations, including contributing to a backlog of planning applications or increased community tension, will be mitigated.....Page 33

Recommendation 4. Welsh Ministers should write to the Committee at the earliest possible opportunity once the service level agreement (SLA) on resourcing enforcement of the Water Resources (Control of Agricultural Pollution) (Wales) Regulations by Natural Resources Wales has been agreed (expected by October 2022). The letter should set out the key points in the SLA, including resourcing levels; what NRW is expected to do; what outcomes the Welsh Government expects; and the evidence used to set the levels in the agreement.Page 35

Recommendation 5. The Welsh Government should publish guidance setting out how Natural Resources Wales should approach enforcing the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021.....Page 36

Recommendation 6. The Welsh Government should provide the Committee with more specific information on how it is taking account of the needs of tenant farmers and farms affected by bovine TB as part of NRW's enforcement regime, and what mechanisms will be used to monitor and respond to concerns that are raised either in the WLMF sub-group or by other means. The Minister should provide the Committee with further annual updates on these matters, outside the scope of the regulatory review timeframe.....Page 38

Recommendation 7. In the interest of goodwill and transparency, the Welsh Government should coordinate with the relevant bodies to collate and publish an update on the status of the 45 recommendations of the Wales Land Management Forum’s sub-group report on tackling agricultural pollution. It should also set out, where appropriate, how those recommendations have been taken account of in the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021. Page 40

Recommendation 8. The Welsh Government should prioritise any suitable alternative proposals that utilise technology rather than closed periods for spreading, or ‘farming by calendar.’ Page 44

Recommendation 9. The Welsh Government should provide the Committee with an update on its consideration of alternative proposals by early 2023 and further regular annual updates on the consideration of alternative measures, in advance of the formal regulatory review. Page 44

Recommendation 10. The Welsh Government should review the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 at the earliest possible opportunity, and ensure that preparatory work to improve the Regulations, including with the introduction of alternative measures, should start in good time. The Welsh Government should take account of the work of the Economy, Trade and Rural Affairs Committee when reviewing the Regulations. Page 45

1. Introduction

In June 2021 the Senedd unanimously voted for ‘the responsible committee’ to urgently review the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 (‘the Regulations’) and present recommendations to the Senedd. This Committee carried out the review.

1. The Regulations came into force in April 2021, and mean that farmers across Wales must comply with new rules on applying and storing nutrients on their land. These Regulations revoke and replace the Nitrate Pollution Prevention (Wales) Regulations 2013 and the Water Resources (Control of Pollution) (Silage and Slurry) (Wales) Regulations 2010, which implemented the EU Nitrates Directive (91/676/EEC) (“the Nitrates Directive”), and designated 2.4% of land in Wales as nitrate-vulnerable zones (“NVZ”). However, the new Regulations also have much broader aims to tackle all the causes of agricultural pollution and help deliver international and domestic obligations.

2. The Minister’s written evidence to the Committee in May 2022 explained that the Regulations support Wales’s continued commitment to the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity, the UN’s Sustainable Development Goals and the Gothenburg Protocol. They will also contribute to delivering the goals of the Well-being of Future Generations Act (Wales) 2015 and the aims of the Environment Act (Wales) 2016:

“While the primary aim ... is to reduce water pollution, the measures are designed to avoid pollution swapping and to prevent or minimise increased losses of nutrients to the environment. This includes nitrates, phosphorous, greenhouse gases and ammonia. By taking this approach, the CoAP Regulations deliver against a wide range of Wales’ responsibilities and provide a holistic response to environmental challenges related to agricultural production.”

3. The Minister stated that the new regulatory approach aims to address risks associated with retrospective EU infraction proceedings and the level-playing field requirements of the EU-UK Trade and Co-operation Agreement. She also said the Regulations are designed to secure

access to European and global markets by enabling Welsh agriculture to demonstrate Welsh food is produced to recognised baseline standards.

4. Few issues have divided farmers and environmentalists as much in recent years. The new rules on agricultural pollution have caused anger in Welsh farming communities, with farmers calling them “draconian” and “punitive”, and NFU Cymru issuing a legal challenge. Environmentalists argue the measures are long overdue and will help stop “catastrophic” environmental damage. The debate came to a head when, following a Plenary debate on the Regulations on **9 June 2021**, the Senedd voted unanimously for an urgent review by a Senedd Committee.

5. The Economy, Trade and Rural Affairs Committee conducted the review, starting with a **consultation** from 5 August to 10 September 2021 which asked for views on:

- the positive and negative aspects of the current all-Wales approach;
- the process for developing the current approach;
- the alternatives to the current approach; and
- if an all-Wales approach were to be retained, how the current approach could be improved.

6. In July 2021 NFU Cymru issued proceedings in the High Court for permission to challenge the Regulations. Their application for permission to judicially review the Welsh Government’s decision to introduce the Regulations was granted by the High Court, and a hearing took place on 26 October, 27 October and 9 November 2021.

7. Whilst the judicial review proceedings were active the Committee continued to carry out its work by gathering evidence in relation to policy matters only. During this period the Committee heard oral evidence from Natural Resources Wales (NRW), Farmers’ Union of Wales (FUW), NFU Cymru, and representatives of Wales Environment Link (WEL) - Wildlife Trusts Wales (WTW) and Afonydd Cymru. The court **handed down** a judgement on 23 March 2022, dismissing NFU Cymru’s judicial review challenge to the Welsh Government’s decision to introduce these Regulations.

8. The Committee was originally due to take oral evidence from the Minister for Rural Affairs and North Wales, and Trefnydd (the Minister) on 9 December 2021. However, the Minister requested that this was delayed until after the court had delivered a judgement. After the case was dismissed, the Minister gave evidence on 11 May 2022, and provided further written

evidence in advance of this session. All the written evidence and additional information received is listed at Annex B: List of written evidence. A list of all the oral evidence sessions is at Annex A: List of oral evidence sessions.

2. Background to the Regulations

9. The Regulations cover not only agricultural pollution caused by nitrates, but also phosphorous, greenhouse gases and ammonia, as well as other measures aimed at tackling pollution and protecting the environment. The change in the way nitrate pollution is tackled by these Regulations was the main focus of the review, led by the body of evidence received by the Committee.

10. Nitrates can pollute water and kill wildlife. The Regulations include statutory measures designed to improve water quality by controlling nitrates. Farmers often use fertilisers, manure and slurry, which contain nitrates, to add nitrogen to the soil. This improves plant development and increases crop quality and yield. But, in excess, nitrates can cause significant and persistent environmental damage.

11. Most nitrate pollution comes from diffuse agricultural sources (many single sources combined), through land run-off. Excess nitrates can enter surface water bodies, such as lakes and rivers, and cause 'eutrophication'. This is where an imbalance in the ecosystem harms the aquatic life. Nitrate pollution can also affect drinking water sources if it enters groundwater.

12. The Regulations introduce an all-Wales "regulatory baseline" to control agricultural pollution, including:

- nutrient management plans and record keeping. This includes a requirement for a written plan for any nitrogen fertiliser application, which includes the soil nitrogen supply and the requirement of the crop;
- controlling when, where and how fertilisers are spread - for example preventing slurry spreading between October and February;
- applying the right amount of fertiliser, in the right way, to meet the requirements of the crop. The regulations set controls for nitrate applications from organic and inorganic fertilising materials and set limits for total nitrogen loading at farm and field level; and
- standards for storing manure and silage. This includes requiring slurry and silage effluent to be contained and stating the capacity and construction requirements for the storage of organic manures and silage.

13. The Regulations provide transitional measures for holdings not previously in a NVZ, which are now required to comply with the relevant provisions and requirements. The requirements will be phased in over three years until 1 August 2024. Welsh Government has issued guidance and made funding available, including £11.5m for nutrient management infrastructure. Farmers can get advice through Farming Connect.

14. The measures set out in the Regulations to tackle nitrate pollution are similar to those of the NVZs required under the Nitrates Directive. Farming unions have argued that these measures are “cut and pasted” from EU NVZ regulations¹ but are now being applied as an “all-Wales NVZ”. NRW states that compliance with the Regulations would result in a reduction in a range of pollutants, including nitrates, phosphorous, ammonia and nitrous oxide which impact upon water quality, air quality, climate change and biodiversity.

The official NRW review recommended 8% NVZ coverage

15. The Nitrates Directive requires Member States to identify waters that are, or could become, polluted by nitrates to ensure appropriate NVZ designation (every four years), and to carry out monitoring and reviews. NRW had responsibility for reviewing Welsh NVZ designations. The last review in 2015-16 was undertaken using data up to and including 2014. It recommended designating seven new areas, which would have increased the total area designated as a NVZ from 2.4 to 8% of Welsh land. The Welsh Government then consulted on two options:

- continuing the approach to NVZ designation, resulting in more measures and increasing the land area being designated to 8%; or
- designating the whole of Wales as a NVZ.

A more comprehensive regulatory approach

16. The Minister’s written evidence to the Committee on 11 May set out the rationale for the regulatory approach that was ultimately taken. It stated that of the two types of water pollution – point source pollution and agricultural diffuse pollution – the latter was “one of the main reasons water bodies in Wales fail to achieve good status in accordance with obligations derived from the Water Framework Directive (WFD)”. It also said that NRW assessments from 2010-2015 found that “poor agricultural land management practices and infrastructure” were contributing 37% of the diffuse pollution issues identified, and explained that:

¹ FUW written evidence

"Whilst the CoAP Regulations fulfil obligations derived from the Nitrates Directive, they move away from a Nitrates Directive approach and take account of wider obligations and objectives. They are not Nitrate Vulnerable Zone (NVZ) regulations. A discrete Nitrates Directive approach does not protect water bodies across Wales from failing to meet other safety and ecological standards, reduce atmospheric pollution or tackle and mitigate climate change.

Ecological change can occur below the thresholds established by the Nitrates Directive, particularly in combination with other agricultural pollutants, including phosphorous. Phosphorous pollution in our rivers is detrimentally affecting housing and economic developments, including agricultural developments, in river Special Areas of Conservation (SAC)."

17. Welsh Government's evidence pointed to NRW's assessment of widespread phosphorous breaches in the nine river SACs in Wales, affecting *"some of Wales' most special wildlife"*. This includes assessments of the River Wye indicating *"agriculture contributes approximately 66% of the phosphorous pollution,"* adding that the data used does not take account of significant recent increases in poultry numbers in the catchment. The Minister told the Committee that the reason for the 170kg per hectare limit for nitrogen spreading by Welsh farmers, rather than the higher limit of 250kg in the first draft regulations and applying in other UK nations, was to tackle phosphorous pollution in Wales.²

18. Welsh Government also stated that *"over 90% of ammonia emissions in Wales are caused by agriculture, which is the cause of over 87% of Wales' sensitive habitats exceeding statutory thresholds for acidification and eutrophication."* It pointed to the negative impacts on human health of fine particulate matter, and the need to reduce ammonia emissions to *"protect public health and our most important environment features, and achieve statutory emission reduction commitments..."*, also noting that these are "transboundary pollutants" which Wales has obligations to prevent. The evidence paper stated:

"As well as providing baseline standards to tackle agricultural pollution affecting waterbodies, it is recognised regulations which apply throughout the whole of Wales will help to meet other key objectives on biodiversity, air quality, related to ammonia and particulate matter, and reducing greenhouse gas emissions."³

² Paragraph 44, Economy, Trade and Rural Affairs Committee, 11 May 2022

³ <https://business.senedd.wales/documents/s124835/Evidence%20from%20Welsh%20Government.pdf>

19. Both farming unions raised concerns around the removal of the derogation which allowed additional nitrogen spreading on qualifying grassland farms.⁴ NFU Cymru warned the *“decision not to include the derogation to the 170 kg/ha N limit for farms with over 80 per cent grassland is a de facto stocking limit requiring destocking on many Welsh farms with impacts to farm viability, critical mass within the supply chain and employment”*⁵ and that the lower rate could lead to ‘offshoring’ of production to countries with lower standards.

20. In their response to the Committee’s consultation Welsh Water commended the Government on their *“clear intent to better control polluting activities which impact on our rivers, and to deliver a more sustainable and resilient environment for future generations”* and that *“there is no question that action is urgently required to better control the entry of nutrients to our rivers, and coastal waters alike.”* However they did raise some concerns with the Regulations.⁶

21. Welsh Water currently recycle about 148,000 tonnes of biosolids on agricultural land around their four Advanced Anaerobic Digestion plants. They are concerned that the new lower spreading limits *“are likely to reduce the capacity for biosolid spreading in the landbank of agricultural land used by DCWW [Dŵr Cymru Welsh Water]. An excess of biosolids between 30,700 and 115,600 tonnes/yr and a landbank area loss of 13% to 60% are predicted.”* The knock on effect of this would be that Welsh Water would either have to travel further to find land where they can recycle their Biosources or they will need to invest in new systems for recycling which will in turn lead to an increased cost for customers.⁷

22. Members are concerned that the withdrawal of the derogation for qualifying grass land farms will put Welsh farmers at a competitive disadvantage. The Committee feels the Welsh Government should reconsider the decision to drop the derogation.

Recommendation 1. The Welsh Government should re-introduce the derogation which allowed qualifying grassland farms to spread up to 250 kg/ha of nitrogen.

Process of bringing in the Regulations

23. In December 2017 the Minister said she was “minded to introduce a whole Wales approach” and confirmed this in November 2018. At that time the Regulations would have come into force in January 2020. In December 2019 the Minister said the farming industry had advocated an alternative approach based on flexibility and “earned autonomy” and she wished to explore this further. But in April 2020 the Minister published draft regulations for an all Wales

⁴ Written evidence

⁵ Written evidence

⁶ Written evidence

⁷ Written evidence

approach, saying she was minded to introduce the regulations “once the [Covid] crisis comes to an end”. She reiterated in May 2020 that she would not bring the regulations forward “while we're in the current pandemic period”. Despite this, the Regulations were laid before the Senedd in January 2021 and came into force on 1 April 2021. An opposition motion to annul the Regulations was defeated in the previous Senedd (3 March 2021). When challenged on the timing of bringing forward the Regulations, the Minister told the Committee:

“Unfortunately, we're still in the pandemic, aren't we? So, I go back to what I was saying: we hadn't seen any decrease in the number of incidents. We're still having, on average, three per week, and that has continued into this year, unfortunately. I got to a position where, clearly, the pandemic was going in a way that none of us...envisaged. I talked to stakeholders, and the reason we introduced them when we did was because the number wasn't decreasing, but also we had that transitional period, and I felt that was enough time, working closely with the sector, to be able to bring these regulations forward. And if I can just reiterate one more time, Chair, that these regulations, when you look at them, are no more stringent than the current ones.”⁸

24. The Committee picked up on the Minister’s strong assertion that the new Regulations are no more stringent than what was previously in place, questioning then the merits of introducing the new mandatory approach. The Minister said that she had not wanted to move away from a voluntary approach to tackle agricultural pollution incidents, but that it “*didn't work, as we've seen an increase*”. The Minister went on to say:

“Farmers have a statutory duty not to pollute, and we are going to have to watch very closely to see what improvements they do bring forward. That's why the review is there, because we need to make sure they work. But the most important thing is that people aren't complying, so we now want to make sure that people comply. And, as I say, the support is there and it is really important that we see a reduction, because it is harming the agricultural sector's reputation here in Wales. I don't want that, I wouldn't think you'd want that, and I don't think any farmer that I speak to wants that, and they absolutely see themselves as part of the solution to the climate emergency. This is their opportunity now to do it.”⁹

⁸ Paragraph 148, Economy, Trade and Rural Affairs Committee, 11 May 2022

⁹ Paragraph 153, Economy, Trade and Rural Affairs Committee, 11 May 2022

Widely divergent views on the Regulations

- 25.** Wildlife Trusts Wales (WTW) welcomed the Regulations, saying *“for too long the farming industry has relied on voluntary measures that simply haven’t deterred the worst offenders”* and the *“new regulations should enable a level playing field for all farmers in Wales”*.¹⁰ Iolo Williams, TV presenter and naturalist, said this was *“great news”* for Welsh rivers that was *“long overdue.”*¹¹
- 26.** Angling groups also support the Regulations. Salmon and Trout Conservation Cymru expressed *“relief”* that regulations to *“curb the scourge of agricultural pollution in Welsh rivers”* had *“finally”* been introduced.
- 27.** But Farmers Union of Wales (FUW) President Glyn Roberts described the Regulations as a *“draconian move”* that made a *“mockery of devolution”* and marked *“a betrayal of the principles of evidence-based decision making”*. NFU Cymru’s then President John Davies said that an *“all-Wales NVZ is indiscriminate and punitive”* and that the support made available to farmers to adapt to *“such drastic changes”* is *“woefully inadequate”*. He added that the Regulations were a *“lazy ‘cut and paste’ of the much-discredited EU Nitrates Directive.”*¹²
- 28.** The farming unions support a regulatory framework combined with voluntary measures to tackle pollution, and point to the importance of implementing the 45 recommendations of a sub-group on agricultural pollution established under NRW’s Wales Land Management Forum (WLMF) in 2017, which was led by NFU Cymru and received partnership funding. That sub-group includes representatives from Welsh Government, NRW, farming and a range of public and third sector organisations. It focused on developing a common understanding of the root causes of agricultural pollution and a range of approaches capable of driving environmental improvements. The sub-group reported to the Minister on an integrated package of measures in April 2018, but no formal response to the report was published (see later section on ‘Alternative approaches’).
- 29.** NFU Cymru brought a judicial review of the Welsh Government’s decision to introduce the Regulations. Four grounds of challenge were relied upon but were dismissed by the Court. The grounds included that the Welsh Ministers had acted unreasonably and unlawfully by failing to take account of all relevant evidence, and took account of irrelevant evidence before taking a final decision to introduce the Regulations. NFU Cymru also claimed that the Welsh Ministers had created a legitimate expectation that the Regulations would contain an exemption for farms

¹⁰ www.wtwales.org/news/brighter-future-welsh-rivers

¹¹ New Wales farming pollution rules ‘compel industry to change’, BBC News online, 27 January 2021.

¹² www.fwi.co.uk/business/compliance/nvzs/farmers-betrayed-after-all-wales-nvz-vote-is-defeated

comprised of 80% or more of grassland, referred to as the “derogation”. However, this ground was also dismissed.

3. Water quality data and causes of pollution

30. Both sides of the debate use water quality data to support their positions. Witnesses expressed marked differences of opinion about the veracity and quality of the data available, and the significance of different sources of pollution. Welsh Government provided data on the different sources, saying that the Regulations are part of a “suite of measures” to reduce the overall impact of pollution to Welsh rivers.

31. Wales Environment Link (WEL) emphasised the impact of diffuse pollution as a reason for a number of Welsh water bodies failing to meet good ecological status under the Water Framework Directive (WFD). It drew on the 2020 State of Natural Resources Report (SoNaRR) which says:

- 66% of river water bodies fail to achieve good ecological status under the WFD;
- key species numbers have declined and others are at risk of extinction; and
- “one of the major causes is continued widespread agricultural diffuse pollution, resulting in elevated nutrient (such as nitrogen and phosphorous) and sediment loadings into freshwaters.”¹³

32. Welsh Government’s written evidence stated that NRW’s 2019 ‘Challenges and Choices’ consultation identified diffuse pollution from agriculture as the reason for 113 water bodies failing to meet good status, and that NRW was currently reviewing the status of waterbodies in Wales. It said that the latest available data confirms *“140 waterbodies in Wales fail to achieve good status due to agriculture, with a further 232 probably related to agriculture and 118 suspected as failing due to agriculture, indicating agriculture is the main cause of failure.”*

33. The paper stated that catchments failing standards in respect of the Nitrates Directive cover approximately 8% of Wales, and that private groundwater drinking supplies are particularly vulnerable to pollution, with 8.7% of tests failing to meet the standards in 2014 due to microbiological and chemical parameters. It went on to say that nitrate pollution affecting biodiversity is not limited to the areas recommended by NRW to be designated as NVZs.

34. The evidence from both Welsh Government and NRW¹⁴ explained that NRW’s 2016 recommendation of a minimum of 8% of Wales to be designated as NVZs was *“in response to the Nitrates Directive requirements only and did not consider other drivers, such as waterbodies*

¹³ Written evidence

¹⁴ <https://business.senedd.wales/documents/s119995/APR%202032%20Natural%20Resources%20Wales.pdf>

failing to achieve Water Framework Directive (WFD) good status, SAC designated rivers failing their Phosphates (P) targets, sensitive sites exceeding ammonia thresholds etc as these are not included within the methodology."

35. Creighton Harvey of Afonydd Cymru told the Committee that agricultural incidents, particularly related to dairy farming, were significant as one of the two main sources of water pollution in Wales, along with pollution from sewage treatment works:

*"...[if] you look at the map of pollution incidents in Wales, you'll see the huge concentration of agricultural incidents in the dairy farming areas of the south-west, and also to some extent up in the north-east as well, but the problem is less there. So, agriculture is up there in terms of the numbers of pollution incidents, and both major sources of pollution have to be tackled."*¹⁵

36. He also argued that the problem did not just apply to larger dairy farms:

*"Over the last four years, I've followed six prosecutions through the magistrates' court in Swansea and Llanelli. All involved dairy farms. One involved a huge dairy farm—it was at that time milking 1,800 cows—one involved a farm milking 700 cows, and the other four involved small family farms on small streams, where bad management or infrastructure failure resulted in serious incidents."*¹⁶

37. Welsh Government's evidence also supported this argument that "insufficient slurry storage capacity in the dairy sector is an issue affecting all farm sizes", adding that "the cumulative impact of pollution from many small farms can be just as significant as pollution caused by a large farm."¹⁷

38. The farming unions on the other hand presented a picture of improving water quality over time, significant regional variation across Wales, and a number of separate issues influencing water quality. FUW stated:

"... in 2016, 2017, 2019 and 2020 water pollution incidents attributable to the water industry across Wales were higher than those attributable to agriculture.

... in many Welsh water catchment areas, no water pollution incidents have been attributed to agriculture since 2015, while in scores of others the number

¹⁵ Paragraph 131, Economy, Trade and Rural Affairs Committee, 25 November 2021

¹⁶ Paragraph 214, Economy, Trade and Rural Affairs Committee, 25 November 2021

¹⁷ Written evidence

of incidents attributed to agriculture are dwarfed by those attributed to other industries and sectors.

For example, 49% of water catchments across Wales had 2 or less water pollution incidents relating to agriculture during the 5 year period from 2016-2020, 9% of which did not experience a single incident.”¹⁸

39. Rachel Sharp of WTW was asked if she accepted one of the farming union’s figures suggesting that between 1 March 2016 and 31 December 2020, agricultural pollution only made up 16.7 per cent of the total pollution incidents in Wales. She replied that she had ‘a problem’ with the data in terms of the amount of monitoring going on, and it was her view that pollution incidents were “*very under-recorded*”. She went on to assert that it was “*notoriously difficult*” to detect where diffuse pollution incidents were coming from, whether from one farm or multiple farms.¹⁹

40. Creighton Harvey explained that one reason for under-recording was the NRW call-out guidelines:

“Unless there is a serious incident where there is risk to human health or fish kill or fish in distress, basically, NRW are not going to turn out, and incidents are only recorded when NRW confirm that the incident took place. So, you might report an incident, NRW do not think it is of sufficient importance to turn out immediately, so, they might turn out the following day, by which time the incident has passed and they cannot confirm an agricultural pollution incident.”²⁰

41. He also pointed to the impact of the pandemic on NRW data since March 2020, due to NRW not attending incidents to confirm them: “*The number of reported incidents is higher; the number of confirmed incidents is lower, because of the lack of investigation by NRW caused by the COVID crisis.*”²¹

42. After giving oral evidence to the Committee in September 2021, NRW provided the Committee with supplementary written evidence including reported and substantiated pollution incidents from 2016 until 24th September 2021.²² It said:

¹⁸ Written evidence

¹⁹ Paragraph 138, Economy, Trade and Rural Affairs Committee, 25 November 2021

²⁰ Paragraph 142, Economy, Trade and Rural Affairs Committee, 25 November 2021

²¹ Paragraph 143, Economy, Trade and Rural Affairs Committee, 25 November 2021

²² <https://business.senedd.wales/documents/s119995/APR%202032%20Natural%20Resources%20Wales.pdf>

"the data indicates that the agricultural sector and Water Industry are the biggest contributors to the reported and substantiated pollutions reported to NRW".

43. NRW noted that *"Due to the transient nature of some pollution incidents, delays in reporting and other circumstances beyond NRW's control it is not always possible to identify the pollution source."* It explained that these reports would remain unsubstantiated and not appear in its data graphs.

44. Regarding pollution from the water industry, NRW said *"Water companies are responsible for the self-reporting of pollution incidents to NRW and recorded on WIRS. The majority of water industry incidents are self-reported including those with potential to pollute but may not result in environmental impact. This potential inflation of reported incidents by the water industry should be considered in any comparisons of sector causes."*

45. The Minister was asked about the way that the agricultural industry was being targeted for regulation in comparison to the water industry, which falls in the portfolio of the Minister for Climate Change. She pointed to 45 substantiated incidents of agricultural pollution so far in 2022, saying:

"We can't let it carry on in the way that it has done. These regulations were necessary to ensure that we deliver net zero...and that we don't undermine our environmental standards. As we left the European Union, we've got very high standards here in Wales, and we want to maintain them, and we cannot let a few spoil it for everyone. So, I think it is really important. But, we're not just targeting agricultural pollution. I am aware that pollution happens from other areas, and I know that the Minister for Climate Change continues to have discussions with the water sector, for instance."²³

46. This Committee also recognises that in March the Senedd's Climate Change, Environment and Infrastructure Committee separately **reported** the results of its inquiry into water quality and sewage discharges, with a debate on that report currently scheduled for 15 June 2022.

²³ Paragraph 146, Economy, Trade and Rural Affairs Committee, 11 May 2022

4. An all-Wales approach

47. WEL argued that a cross-territory approach means Wales is ready for farming intensification in new, more sensitive, areas, and WTW stated that an all-Wales approach *“will deter potentially shifting of the issue to non-regulation areas.”*²⁴ WEL also said it places all farmers on a level playing field, avoiding a *“competitive imbalance”*²⁵.

48. Gareth Parry of FUW refuted that assertion:

*“...applying these regulations across the whole of Wales necessarily doesn't address that competition due to the nature of farming. Nevertheless, there is obviously a need to target certain areas where there is an issue, rather than simply making the assertion that it will enable intensification in certain areas where it isn't happening already.”*²⁶

49. WEL also stated the Regulations will have greatest impact on slurry-based systems. WEL says: *“If a farm does not produce slurry then the regulatory approach will have little impact on them.”*²⁷ This was challenged strongly by both farming unions (see Financial Impact and Funding section below).

50. FUW agreed that *“one pollution incident is one too many”*²⁸, however both farming unions strongly disagreed with an all-Wales approach. NFU Cymru argued there's *“no evidence to justify”* a *“disproportionate and burdensome”* all-Wales approach, and questioned the effectiveness of NVZ designations over time. NFU Cymru highlighted NRW information showing:

*“... no substantive evidence of the effectiveness of the [previous] NVZ Action Programme in reducing agricultural pollution despite ... designations dating back to 2002. In fact, spikes in nitrates have been observed prior to the start of and at the end of the closed periods.”*²⁹

51. Robert Vaughan of NRW told the Committee that:

“... our knowledge from [Wales and] other parts of the country and into Europe is that there hasn't been a reduction, mainly, in nitrate levels within

²⁴ Written evidence

²⁵ Written evidence

²⁶ Paragraph 53, Economy, Trade and Rural Affairs Committee, 25 November 2021

²⁷ Written evidence

²⁸ Paragraph 97, Economy, Trade and Rural Affairs Committee, 25 November 2021

²⁹ Written evidence

the ground as a consequence of the designations happening. Very few areas that have been designated have actually come out of designation."³⁰

52. Aled Jones of NFU Cymru emphasised that water testing undertaken by NRW was "very, very robust" and that the evidence was "totally lacking" for the requirement for an all-Wales approach:

*"yes, they're very under-resourced, but we can trust the information that comes out of NRW. That data shows that there are 113 of the 952 water bodies that are failing. And so there are some areas that have never, in the last 10 years, had any issues at all. So, for that reason, the evidence is totally lacking."*³¹

53. Aled Jones of NFU Cymru also pointed to different approaches taken outside Wales, which he said showed a lack of evidence that what the farming unions describe as an "all-territory NVZ approach" had a positive impact on water quality:

*"England have adopted 58 per cent of the land area in NVZs and Scotland 14 per cent. The rest of Scotland use what they call basic measures, which are voluntary measures that the farmers undertake for those reasons. Ulster decided to go for an all-territory approach and likewise, 10 years ago, when they introduced the all-Ulster approach, the evidence in terms of the improvement in water quality is certainly not there."*³²

54. Written evidence from Welsh Government stated why it did not believe that geographical targeting would prevent pollution:

"Geographical targeting of regulations would not prevent pollution occurring in areas where regulations do not apply, including through unsustainable intensification, and would do little to address atmospheric emissions. Areas which have lower environmental standards are at a greater risk from unsustainable practices. These areas are also more likely to be seen as areas for development, due to lower regulatory requirements.

A geographically targeted approach would not protect the well-being of future generations. This is why an approach which prevents pollution

³⁰ Paragraph 22, Economy, Trade and Rural Affairs Committee, 30 September 2021

³¹ Paragraph 45, Economy, Trade and Rural Affairs Committee, 25 November 2021

³² Paragraph 46, Economy, Trade and Rural Affairs Committee, 25 November 2021

occurring, as opposed to reacting once significant damage has been caused, has been taken."

55. Welsh Government also argued strongly that an all-Wales approach was the only way to guarantee long-term improvements to waterbodies, which can take decades to achieve, and to tackle the nutrient loading effect, which it describes as the "nitrate time bomb":

*"Waterbodies failing to achieve WFD good status and those exceeding phosphorous limits would not be protected by 7 discrete NVZs. Designating discrete NVZs would do little to tackle ammonia and nitrous oxide emissions or PM2.5 caused by agriculture and Waterbodies and biodiversity would not be protected from the impacts of pollution incidents."*³³

Impact on uplands

56. Environmentalists have particular concerns about slurry from intensive dairy farming: Rachel Sharp of WTW stated that "on the rivers in the west, the Teifi et cetera, there's a real issue with dairy waste."³⁴

57. Creighton Harvey said that NRW had expressed concerns to the agricultural pollution subgroup of the Wales Land Management Forum (WLMF) about not being able to predict where bad practice might pop up. He said the practice described by NRW was:

*"...a short lease, perhaps 15 years, would be taken out in relation to a particular farm, and then, some dramatic changes would take place on that farm, including the installation of tracks, the ripping out of hedgerows, which would be in breach of some of the cross-compliance legislation. There would be slurry stores installed that would not be ...compliant. And, basically, there was a huge risk of diffuse pollution taking place as a result of these actions, and they couldn't say where these farms were going to occur."*³⁵

58. He did not want to see legislation having to 'catch up' with bad practice:

"If you don't have an all-territory provision, what you'll end up with is farmers, quite legally, adopting bad practice in upland areas, and you will have a delay when legislation has to catch up with bad practice. And, to me, that seems completely unacceptable. It's very difficult for legislation to work if

³³ <https://business.senedd.wales/documents/s124835/Evidence%20from%20Welsh%20Government.pdf>

³⁴ Paragraph 127, Economy, Trade and Rural Affairs Committee, 25 November 2021

³⁵ Paragraph 150, Economy, Trade and Rural Affairs Committee, 25 November 2021

it's always having to follow the problem. Really, regulation needs to be there across territory for the problem to be dealt with."³⁶

59. However Aled Jones of NFU Cymru also pointed out the impact of the Regulations on smaller dairy, sheep or mixed farms in upland areas could lead to other detrimental environmental impacts in those areas:

*"...many of our hill farms are covered now by the water regulations, and they will also have to adhere to the paperwork involved and the limits that they would have on their businesses. Now, some of these farms in the highland area would typically be grazing suckler cow herds, sheep, mixed farms, and the implications for those smaller farms of not being able to invest in the capital requirements would have serious implications on the number of cattle we do have in these upland scenarios. Now, there's an accepted understanding of the importance of cattle in an upland setting. Biodiversity, ground nesting birds are severely impacted if the rough grasses become far more prevalent, and the lack of cattle grazing and cattle treading means that there's a reduction in the ground nesting birds. So, there are implications, and we must be aware of these long-term impacts."*³⁷

60. FUW also pointed to the impact on smaller upland farmers who could be forced out:

*"...it's also important to recognise...that there will be a number of upland farmers who will have small cattle suckler herds who will not be able to bear these costs of around £30,000 to £40,000 for new slurry stores. Simply, the easy way out for those farmers will be to stop farming cattle."*³⁸

61. The Committee raised these concerns about unintended consequences - for the farming industry and individual farmers, and for biodiversity of upland areas - with the Minister.³⁹ The Minister said that she did not accept these arguments:

"You referred to biodiversity, and, obviously, upland habitats, species, can be more sensitive to pollution. It is still critical pollution is prevented in these areas if we are going to address the climate and nature emergencies. So, what these regulations will do, in my opinion, is prevent unsustainable

³⁶ Paragraph 152, Economy, Trade and Rural Affairs Committee, 25 November 2021

³⁷ Paragraph 49, Economy, Trade and Rural Affairs Committee, 25 November 2021

³⁸ Paragraph 78, Economy, Trade and Rural Affairs Committee, 25 November 2021

³⁹ Paragraph 58, Economy, Trade and Rural Affairs Committee, 11 May 2022

intensification of upland farming, which could otherwise occur in the absence of a regulatory baseline."⁴⁰

62. The Minister then pointed to the planned four year review of the Regulations as an opportunity to identify and address unintended consequences. The Committee asked the Minister specifically about the detrimental impact of the Regulations on farmers' mental health, with some even considering leaving farming altogether. The Minister said that if anyone was suffering with mental health issues as a result of policy that was "*a matter of concern*", particularly acknowledging the big impact of Covid on farmers' mental health and social isolation. She strongly urged people not to "*sit at home and just worry about it*", but to "*please come forward for advice from Farming Connect.*" She reiterated that farmers should firstly read the Regulations, which she said were "*very, very similar to what was in place before*", and secondly to come forward for advice on any concerns: "*There is a huge amount of advice there.*"

⁴⁰ Paragraph 61, Economy, Trade and Rural Affairs Committee, 11 May 2022

5. Financial impact and funding

Impact on farmers of increased regulation and financial costs

63. Both farming unions oppose the Regulations on the grounds of cost, which they argued was disproportionate. NFU Cymru noted the Welsh Government's Regulatory Impact Assessment (RIA) estimated costs of up to £813.5m over 20 years including upfront costs of up to:

- £360m capital investment in new infrastructure;
- £7.5m one-off planning costs; and
- £22.3m annual operational costs.

64. This was set against estimated environmental benefits of £304m (range: £153m to £526m).

65. FUW's written evidence said this equated to an average cost per holding of £14,600, rising to £37,700 for holdings with cattle. It said this could be higher because the cost of building materials has risen sharply.

Funding

66. It was the Committee's understanding from evidence available at the start of its review that the Welsh Government had made £35m available to support farmers to implement the changes:

- £22m through the Sustainable Production Grant (in 2020);
- £1.5m to improve water quality (2021); and
- £11.5m for farm nutrient management infrastructure (2021).

67. Both unions gave the example of Northern Ireland which introduced a whole territory designation over ten years ago and provided £140m-£150m of funding at a grant rate of 60%. NFU Cymru stated that, based on the Regulatory Impact Assessment (RIA) for the Regulations, that this would equate to around £216m in Wales at an equivalent intervention rate.

68. Gareth Parry of FUW highlighted that some larger farmers with higher slurry production and stocking rates would be seeking to buy or rent more land simply for the spreading of slurry. He said it was important to recognise that the Welsh Government's "worst case scenario" figure in the RIA of up to £360 million for the industry in infrastructure costs (e.g. upfront costs for new

slurry stores) was, "around £100 million more than the total income from farming in Wales in 2019", adding that "it's a huge cost to the industry if an all-Wales approach is implemented as is being proposed at the moment".⁴¹

69. Gareth Parry broke the costs down further, to the average cost per active Welsh holding that only has cattle:

*"This £37,000 is around £11,000 more than the average Welsh farm business income in 2019-20. But also it's worth highlighting, in reference to those costs, that those costs could be around 20 per cent higher by now given the shortage of building materials and also the number of farmers who are having quotes that are only lasting for one or maybe two months, given how prices are increasing."*⁴²

70. Gareth Parry pointed out that the capital funding already allocated by Welsh Government - £11.5m - equated to 3% of the potential costs in the impact assessment, and that "if we went from a pan-Wales approach to a more targeted approach, then that grant funding would be able to be used much more effectively."⁴³

71. When the Minister was asked in Committee about the total figure of £35 million in grant support she said:

"We've given far more than £35 million. I think just in the last three years, we gave more than £40 million, and that's been made available directly to farmers to reduce pollution and to support the necessary changes that they think they have to bring forward in relation to their own farm practices."

72. The Minister referred to a long list of different funding pots and grant mechanisms, including £22 million put into capital infrastructure improvements; "about £8 million" in sustainable production grant; the farm business grant to acquire equipment; "about £5 million on water quality"; Glastir smaller grants; and supporting farm businesses through the Rural Development Programme 2014-2020 (RDP). She also stated that there were "specific schemes" within the £227m three year package of wider support to foresters, land managers and food businesses to "enable farm businesses to support infrastructure investment". The Minister urged smaller businesses to look to Farming Connect for advice on support available. She outlined a

⁴¹ Paragraph 72, Economy, Trade and Rural Affairs Committee, 25 November 2021

⁴² Paragraph 73, Economy, Trade and Rural Affairs Committee, 25 November 2021

⁴³ Paragraph 77, Economy, Trade and Rural Affairs Committee, 25 November 2021

range of events, e-training modules, webinars, clinics and publications that were being used to advise farmers on the Regulations.⁴⁴

73. The Minister went on to refer to a future announcement of a funding “window” in the next 3-4 months of around £100m *“that will include schemes to support investments to enhance the technical, financial and environmental performance of farm businesses, and to support infrastructure investments”* referring in particular to slurry storage concerns, while noting that *“we cannot give public money to bring you up to the required legal standard.”*

74. The Minister told the Committee that the slurry storage requirements were comparable to existing requirements since 1991, and also pointed to the NRW dairy project by NRW that had shown a high degree of non-compliance: *“...a significant number of farms, approaching, I think, 50 per cent of farms, weren't compliant...”*

75. The Minister listed a range of general agricultural funding and support schemes available to assist farmers with implementation of the Regulations, as well as referring to a forthcoming funding window. For clarity and transparency, the Committee thinks it would be helpful for Welsh Government to set out exactly what support has been, and will be, available to farmers to address the various requirements of the regulations, and the resources set aside to advise them on those requirements.

Recommendation 2. The Welsh Government should set out exactly what support has been, and will be, made available to farmers to meet the water quality and other various requirements of the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 - both financial support and advisory services. This should include the amounts, funding delivery mechanisms and timescales, and identify the resources given to and provided by Farming Connect. In doing so, Welsh Government should set out the research, evidence and calculations made to determine the support levels required and provided.

76. The farming unions strongly refute WEL’s assertion that the regulatory requirements of introducing an all-Wales approach would not impact on all farmers. Aled Jones of NFU Cymru:

“...when they say that low-impact farmers should have nothing to worry about, unfortunately, regulation is regulation—30 mph is the same in Ysbyty Ifan as it is in the centre of Cardiff. ...Now, once you bring regulation in, it's part of cross-compliance. Cross-compliance means, therefore, that there's monitoring. You could be drawn out for checks of record-keeping, for

⁴⁴ Paragraph 87, Economy, Trade and Rural Affairs Committee, 11 May 2022

example, and any non-compliance would have the impact then of sanctions upon that business."⁴⁵

77. Gareth Parry of FUW also pointed to the increased costs to farmers from various requirements set out in the regulations:

*"there are a number of regulations set out in this legislation that refer to annual risk maps, nutrient management planning, farmyard manure management as well, annual record and calculation keeping, and also annual stock and manure records, and it's quite likely that there'll be a number of farmers who'll be seeking agencies, if you like, to complete these records for them if they do not have internet connection or do not have the IT skills to do so themselves. And, of course, there'll be an annual cost involved with that that could add up to thousands of pounds per year, notwithstanding the fact that there will be certain farmers who do produce slurry, which will obviously incur more significant capital upfront costs."*⁴⁶

78. He said that the current regulations were unfair because they will *"penalise those who aren't responsible and will incur costs for those farmers"*.⁴⁷

79. The Minister's view was that *"if you are farming to a very high environmental standard now, these regulations will probably have very little or no impact on you,"*⁴⁸ re-emphasising the statutory responsibility of farmers not to pollute.

⁴⁵ Paragraph 48, Economy, Trade and Rural Affairs Committee, 25 November 2021

⁴⁶ Paragraph 54, Economy, Trade and Rural Affairs Committee, 25 November 2021

⁴⁷ Paragraph 79, Economy, Trade and Rural Affairs Committee, 25 November 2021

⁴⁸ Paragraph 59, Economy, Trade and Rural Affairs Committee, 11 May 2022

6. Transition

Transitional periods

80. FUW said the transitional approach set out in the regulations - implemented in three stages: 1 April 2021; 1 January 2023 and 1 August 2024 – is meant to provide sufficient time for farm businesses to plan, but it *“does not come close to recognising the severe consequences the regulations will have for every farming business in Wales”*. WEL’s view was that the phased approach and support grants should enable necessary improvements.

81. The Minister did not think the regulations would affect the majority of farmers who have *“very high environmental standards”*, saying that *“these regulations won't affect them in the way that I think has been portrayed by some.”*⁴⁹ She acknowledged it was unfortunate to have lost a year to judicial review, noting that *“I've had discussions with the farming unions and I think they would say openly that some of their members perhaps sat back and thought, 'We don't have to rush this', because the outcome could be what they wanted, if you understand what I mean.”*⁵⁰

82. The Minister noted that risk map requirements needed some preparation time, and would apply from January 2023, but that nutrient management planning was already required by *“many of our farm assurance schemes”*. She said the greatest impact would be on those farms that currently apply nutrients to the land without any nutrient management planning, *“and that's where the pollution risk is the greatest, or those who, say, produce nutrients in excess of crop need.”*

83. The storage requirements have the longest transition period - applying from August 2024. Here the Minister again emphasised that they were comparable to existing requirements in place since 1991. She added:

*“...we know that insufficient slurry storage is one of the main causes of agricultural pollution, so if you think about when I introduced the regulations in April 2021 to what I've just stated in August 2024, that's three years, and that's ample time.”*⁵¹

⁴⁹ Paragraph 93, Economy, Trade and Rural Affairs Committee, 11 May 2022

⁵⁰ Paragraph 94, Economy, Trade and Rural Affairs Committee, 11 May 2022

⁵¹ Paragraph 96, Economy, Trade and Rural Affairs Committee, 11 May 2022

Infrastructure improvements

84. Many farms will require infrastructure improvement which will require planning permission to meet the new Regulations. As mentioned earlier the Welsh Government expect these regulations to generate £7.5 million worth of planning work.

85. Aled Jones warned the Committee that *"Many farms have found it very, very difficult getting through the planning regime"*.⁵² Gareth Parry raised concerns about the *"constraint on planning when it comes to local authority resources"* and the cost of planning applications, especially for tenant farmers.⁵³

86. Members are concerned about the increased burden on farmers and the planning system generated by the need to obtain planning permission to meet the requirements of the Regulations. Whilst the cost of this has been identified, Members would like to better understand how the impact of this increased workload for local authorities will be mitigated.

87. As mentioned earlier Welsh Government have estimated that up £360 million worth of infrastructure improvements will need to be made by farmers. Members are concerned that this amount of development could create tensions between farmers and their neighbours – and this friction may be amplified through the planning process.

Recommendation 3. The Minister should set out to the Committee her considerations of the impact these Regulations may have on the planning system, and how any unintended consequences of infrastructure improvement work relating to these regulations, including contributing to a backlog of planning applications or increased community tension, will be mitigated.

⁵² Paragraph 82, Economy, Trade and Rural Affairs Committee, 11 May 2022

⁵³ Paragraph 10, Economy, Trade and Rural Affairs Committee, 11 May 2022

7. Resourcing NRW to monitor and enforce

88. WEL is concerned the Regulations won't have the desired effect if NRW doesn't have resources to enforce them.

89. WTW pointed to the low level of prosecutions for agricultural pollution incidents, and the need for the Regulations to be backed up with "meaningful enforcement" and adequate fines:

"Since 2017 there have been just two prosecutions relating to agricultural pollution in Welsh rivers. New regulations, therefore, need to be backed up by meaningful enforcement. In addition, current fines of a few thousand pounds when prosecutions are undertaken are so low they may create a climate of opinion where it may be better to risk prosecution rather than invest in addressing the problem."⁵⁴

90. Creighton Harvey of Afonydd Cymru said that the lack of investment, and Welsh Government providing funding for NRW staff on an annual basis, created real problems:

"... people are given one-year contracts on the dairy scheme. They then see a permanent job become available within NRW; they apply for it and they get it, leaving the dairy project short of someone who was becoming an experienced operative on the dairy project. So, that's an example of a lack of funding."⁵⁵

91. He said that there were six vacancies out of a total workforce of 13 dairy officers:

"... So, that shows the effect of money not being available to support a particular aspect of this, and that's why it's important that there is proper funding of NRW to make sure that they have the resources to regulate appropriately."⁵⁶

92. When giving evidence last September, NRW told the Committee that enforcing the regulations would be a "massive workload" and staff were being redeployed so they are trained. NRW said it was discussing extra resources with the Welsh Government. At that time it

⁵⁴ Written evidence

⁵⁵ Paragraph 207, Economy, Trade and Rural Affairs Committee, 25 November 2021

⁵⁶ Paragraph 208, Economy, Trade and Rural Affairs Committee, 25 November 2021

estimated that it needed 60 extra staff to deliver the “minimum viable product” but “well over 200” to deliver the “full role”.⁵⁷

93. In budget scrutiny with the Minister for Rural Affairs on 20 January, the Minister said that she had not discussed additional funding with NRW, but that a budget baseline review exercise was being undertaken to examine NRW’s resource allocation against its statutory functions, and programme for government commitments. The Minister said she expected to discuss the regulations with NRW in more detail when in a position to do so. A different Welsh Minister, the Minister for Climate Change, Julie James, is responsible for setting NRW’s budget.

94. After budget scrutiny the Committee wrote to the Minister for Rural Affairs and North Wales, expressing concern that NRW’s funding had not been increased to reflect the additional enforcement responsibilities required by the regulations. The Committee recommended that both Welsh Ministers work together to ensure NRW’s core ‘grant in aid’ funding was increased accordingly. The Minister for Rural Affairs accepted the recommendation in principle, noting NRW’s baseline review was complete and that Welsh Government and NRW were developing service level agreements (SLAs), expected to be completed by this October. The Minister committed to working with the Minister for Climate Change to ensure NRW’s funding reflects the SLAs “as appropriate”.

Recommendation 4. Welsh Ministers should write to the Committee at the earliest possible opportunity once the service level agreement (SLA) on resourcing enforcement of the Water Resources (Control of Agricultural Pollution) (Wales) Regulations by Natural Resources Wales has been agreed (expected by October 2022). The letter should set out the key points in the SLA, including resourcing levels; what NRW is expected to do; what outcomes the Welsh Government expects; and the evidence used to set the levels in the agreement.

Targeted approach

95. Both farming unions argued strongly for a targeted approach that would be more effective and allow limited resources to be focused on the areas of concern. Aled Jones of NFU Cymru said:

“...if you unroll mitigation measures, where you target where the problems arise, then you’re more likely to get a response in terms of return on the investment that would be required there as well.”⁵⁸

⁵⁷ Paragraph 48, Economy, Trade and Rural Affairs Committee, 30 September 2021

⁵⁸ Paragraph 47, Economy, Trade and Rural Affairs Committee, 25 November 2021

96. Gareth Parry of FUW said:

*"in terms of the evidence that's available, it all emphasises, of course, the need for a targeted approach rather than simply an all-Wales NVZ, using regulations that are 30 years old and do not target the need that Wales has."*⁵⁹

97. He explained that NRW as the regulator already had a range of tools to deal with individual incidents, rather than needing to apply "blanket measures".⁶⁰ He said that:

*"...we're not against regulation, but we do believe that regulation targeted in those areas where there is an issue would enable those regulations to be policed more effectively, and would result in the desired outcomes that I think we all want, which is for those pollution incidents to be reduced."*⁶¹

98. WEL told the Committee that the system in Scotland, which introduced 'general binding rules' - statutory controls over certain low risk activities - allowed the Scottish Environmental Protection Agency (SEPA) to concentrate on repeat offenders. WEL said the approach achieved an 80% compliance rate, meaning that the remaining 20% could be targeted to become compliant.

99. The Minister told the Committee that she thought the Scottish approach was very similar to that in Wales, being mandatory albeit with some differences, but that the planned review of the Regulations after four years would allow comparisons to be made based on evidence. In terms of being pragmatic about enforcement, the Minister said:

"I think it's fair to say that NRW take a very pragmatic approach to enforcement. Certainly, when I was responsible for NRW, I had many discussions about this and I never found them to be over the top or anything like that, and I think it's very similar with the enforcement agency in Scotland."

Recommendation 5. The Welsh Government should publish guidance setting out how Natural Resources Wales should approach enforcing the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021.

⁵⁹ Paragraph 52, Economy, Trade and Rural Affairs Committee, 25 November 2021

⁶⁰ Paragraph 40, Economy, Trade and Rural Affairs Committee, 25 November 2021

⁶¹ Paragraph 97, Economy, Trade and Rural Affairs Committee, 25 November 2021

8. Incorporating the Regulations into National Minimum Standards

100. NFU Cymru is concerned that existing regulations, including these Regulations, will be incorporated into future National Minimum Standards, with compliance a pre-requisite to accessing future support through the proposed Sustainable Farming Scheme.

101. The union argues that this “places in jeopardy” businesses which, for whatever reason, are unable to reach regulatory compliance, with tenant farmers and farms suffering a bovine TB breakdown particularly at risk. The farming unions and Tenant Farmers Association are concerned about the impact on tenant farmers because, typically, tenants need to request for the landlord to provide the improvements to ensure compliance with statutory obligations. If landlords refuse, tenants may find themselves in lengthy and costly arbitration or court cases. Aled Jones of NFU Cymru said:

“I would like to remind the committee about the implications for tenant farmers, particularly the impact that they have on landlords not being able to fund some of the capital work involved. If they then are unable to fulfil the national minimum standards, their access then to future support would be diminished quite substantially. So, I think the long-term implications are enormous, and I don't think this has been adequately covered within the regulatory impact assessment, either.”⁶²

102. Gareth Parry of FUW referred back to the WLMF sub-group report in detailing a more flexible approach in future to taking some elements out of the compulsory regulatory framework to become voluntary, *“which would then allow for farmers to be paid for actions over and above regulation, and I think that would be a more effective balance, if you like, to enable those farmers to be rewarded, really, for complying with some of the more stringent measures.”⁶³*

103. WEL on the other hand stated that the National Minimum Standards were an opportunity to set a clear regulatory baseline for sustainable agriculture, and to fill regulatory gaps.

104. The Minister stressed to the Committee the importance of farms that receive payments to deliver environmental outcomes complying with baseline regulatory standards⁶⁴.

⁶² Paragraph 88, Economy, Trade and Rural Affairs Committee, 25 November 2021

⁶³ Paragraph 91, Economy, Trade and Rural Affairs Committee, 25 November 2021

⁶⁴ Paragraph 128, Economy, Trade and Rural Affairs Committee, 11 May 2022

105. With regard to tenant farmers the Minister said it was important that funding went to the active farmer, not to the landlord. She said tenant farmers ‘had a seat at the table’ on the WLMF sub-group and it was important to hear the tenant voice.

106. The Minister also responded to concerns about farmers unable to comply due to bovine TB breakdown, saying that NRW would be pragmatic and work with farmers in that situation.

107. The Committee recognises the farming unions concerns about maintaining flexibility within the regulatory framework, and specifically the merits of supporting tenant farmers and those affected by bovine TB. The Committee would welcome more specific information from Welsh Government about how it is taking account of these concerns and how they will be addressed in the enforcement regime.

Recommendation 6. The Welsh Government should provide the Committee with more specific information on how it is taking account of the needs of tenant farmers and farms affected by bovine TB as part of NRW’s enforcement regime, and what mechanisms will be used to monitor and respond to concerns that are raised either in the WLMF sub-group or by other means. The Minister should provide the Committee with further annual updates on these matters, outside the scope of the regulatory review timeframe.

9. Alternative approaches

108. In December 2017 the Welsh Government signalled an intention to explore regulatory measures, voluntary initiatives and investment with stakeholders. To take this forward, the WLMF sub-group led by NFU Cymru secured partnership funding from NRW in August 2018. NFU Cymru match funded the project directly and in-kind to the sum of £78,750 with other project partners providing in-kind support. The Welsh Government and NRW contributed in an advisory capacity. The progress report provided to the Minister in April 2018 included 45 recommendations spanning five work themes:

- a robust regulatory regime;
- developing a voluntary, farmer-led approach to nutrient management;
- ensuring better advice and guidance is provided and can be taken up by farmers;
- improving the range of investment opportunities; and
- identifying and promoting innovation.

109. The sub-group agreed that each theme had a significant role to play and needed to be considered as part of an integrated package: Chapter 4 of the progress report explored the role of regulation and recommended a pathway for its development.

110. Both NFU Cymru and FUW endorse the work of the sub-group and want the work set out in its report to continue. The sub-group concluded there is no one simple solution and:

"A programme of education, training, voluntary initiatives by farmers, incentives, investment and innovation that is underpinned by smart regulation and additional resources and monitoring is required."

111. NFU Cymru's written evidence stated that, a formal response to the progress report has never been received from Welsh Government. When asked about this, the Minister told the Committee that the majority of the report recommendations were not for Welsh Government, but that they were being progressed, and that officials remained members of the sub-group, which met regularly.

112. NFU Cymru also published a vision for improved water quality in 2017 based on:

"Participation in assurance schemes and 'earned recognition' and novel approaches including trading, off-setting and innovative technologies that

look beyond formal regulation [and] can also deliver positive environmental outcomes."

113. NFU Cymru also proposed a water standard involving a voluntary farmer-led approach to improving water quality. The standard was shared with the Minister and First Minister in March 2020 (a month before the regulations were published). NFU Cymru said in September 2021 that it had yet to receive a substantive reply to the proposal from the Welsh Government.

114. WEL does not support a voluntary farmer-led approach, saying a number of such schemes have been tried *"over the years, but none have had the required impact at scale that has produced significant improvements to pollution."* This includes the Code of Good Agricultural Practice (CoGAP). NRW also state that *"Voluntary measures such as the Codes of Good Agricultural Practice (COGAP), that have been in place for decades, have failed to deliver improved water quality in practice"*, noting that the Regulations bring several COGAP recommendations within regulation.

115. But WEL did draw attention to Afonydd Cymru's Water Quality Improvement Project in 2019. The project advised farmers on separating clean and dirty water, reducing loss of slurry, manure and sediment, and reducing the impact of diffuse pollution. WEL says replicating this across Wales could cost £8.4m for on-farm capital works matched 1:1 with farmer contributions. The cost for advisors (based on 500 advisors) could be around £27m a year. It says: *"this level of investment is worthwhile to tackle the pollution of our rivers"*.⁶⁵

Recommendation 7. In the interest of goodwill and transparency, the Welsh Government should coordinate with the relevant bodies to collate and publish an update on the status of the 45 recommendations of the Wales Land Management Forum's sub-group report on tackling agricultural pollution. It should also set out, where appropriate, how those recommendations have been taken account of in the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021.

Will the regulations lead to "farming by calendar"?

116. Part 5 of the Regulations stipulates closed periods when spreading is prohibited. There are exceptions for some holding and soil types, but the closed period runs from October to January, with certain further restrictions to the end of February.

117. FUW states that this:

⁶⁵ Written evidence

"... will place significant pressure on cattle farmers to empty their stores before the closed period and spread as much as possible within the limits after the closed period to ensure that storage capacity limits are not exceeded, rather than spreading at the optimal time in regard to weather conditions and crop requirements."

118. Such restrictions have resulted in what have become known as 'national slurry spreading weeks' in regions such as Northern Ireland where a near all-territory approach has been implemented, leading to peak dangers in terms of pollution. Aled Jones of NFU Cymru pointed to 'spikes' in nitrate levels in Northern Ireland at either end of the closed period due to this "farming by calendar."⁶⁶ The Committee heard strong arguments about the importance of flexibility for farmers in when they spread slurry.

119. FUV pointed out that the closed period in the Regulations removed that flexibility, as well as being *"obviously one of the biggest reasons why there will be a huge capital cost involved for new slurry stores to be built."*⁶⁷ As Aled Jones of NFU Cymru pointed out: *"farmers have never farmed by calendar. We farm by the season, and as we've seen with climate change issues, seasons are changing."*⁶⁸

120. When questioned on this point, the Minister's response was that the only reason why farmers would need to spread slurry outside the closed periods was if they did not have enough slurry storage, and they needed to ensure that storage capacity. She said *"this is something we've been working on with the farming sector over the past few years."* She was of the view that the new regulations were *"no more arduous than what was required of our farmers before"*, and also that it was time slurry was valued more as a valuable nutrient rather than a waste product, *"particularly with the price of fertilisers at the moment."*

Regulation 45 of the regulations allows for alternative measures

121. Regulation 45 of the Regulations allows for alternative measures to be developed. The regulation provides that if proposals for an alternative suite of measures are received within 18 months of the regulations coming into force (by 1 October 2022), the Welsh Ministers must consider whether these would deliver the outcomes more effectively than those in the Regulations. If the Welsh Ministers are satisfied that the proposals would be more effective, they must publish a statement within two years of the regulations coming into force explaining what action will be taken.

⁶⁶ Paragraph 99, Economy, Trade and Rural Affairs Committee, 25 November 2021

⁶⁷ Paragraph 101, Economy, Trade and Rural Affairs Committee, 25 November 2021

⁶⁸ Paragraph 99, Economy, Trade and Rural Affairs Committee, 25 November 2021

122. However, NFU Cymru said that *"the level of distrust is such that whether this is, in fact, a genuine offer is very much doubted by the farming industry"*. It doesn't believe Regulation 45 is *"credible or feasible"*, because the Welsh Government has yet to define what outcomes are expected. It also argued the timelines set out in Regulation 45 are *"completely unworkable"* in the context of the transitional periods set by the regulations.

Are improvements to the regulations possible?

123. FUW stated that the regulations *"require nothing short of a complete overhaul"* and advocated implementing the recommendations in WLMF sub-group report.

124. While affirming its rejection of the current approach, NFU Cymru called for changes to the regulations, including:

- Extending the existing transitional periods to at least four years to allow farmers more time to prepare their businesses.
- More investment support.
- That the current regulations must not form part of National Minimum Standards which are to be the 'gateway' to future support.
- An exemption for spreading during the closed periods in exceptional circumstances, which must also include provision for those farms impacted by a breakdown of bovine TB (as is the case in Northern Ireland).

125. But WEL wished to see the Regulations strengthened in relation to ammonia and phosphates, citing a lack of clarity around how the Regulations will reduce phosphates from poultry manure. WEL also believed that that NRW should:

"... set, record and monitor absolute cumulative limits on a holding by holding or catchment basis, against which proposed changes in farm operations or new developments can be assessed."

126. WEL also wants controls on pesticides, and to reduce soil erosion and increase soil protection. It suggests bringing Chapter 4 of CoGAP (field husbandry) into the regulatory framework. Creighton Harvey of Afonydd Cymru said:

"Chapter 4 of COGAP deals with soil protection, and we do feel that if chapter 4 of COGAP, if some of that, was codified that would go to mitigate some of the problems caused by bad agricultural practice in relation to soil, in

particular in relation to maize growing, which occurs particularly in the dairy farming areas."⁶⁹

Use of technology

127. The Committee received strong evidence about the use of technology to facilitate greater flexibility in when farmers could spread slurry. NRW told the Committee:

*"We believe that we're now in a position, with modern technology and other communications, to be able to be far more flexible [...] You might have come across the work that is happening at Gelli Aur, where they've put a number of weather stations within the Tywi catchment to look at how things happen ... [...] ... We've been working with the Welsh Government on the new sustainable farming scheme. And, again, remote sensing and various other issues are being looked at as ways of being able to monitor what's going on within catchments and allow more precision in the way things operate."*⁷⁰

128. Gareth Parry of FUW also raised the benefits of farmers using technology to monitor weather patterns and Meteorological Office Data and account for the effects of climate change on the 'seasons' when deciding when to spread slurry.

129. Victoria Jones of Welsh Government indicated to the Committee that a proposal for an alternative measure using technology was being assessed for the submission of advice to the Minister. While the Minister said she was unable to comment on individual proposals she said she was *"very open to considering alternative measures"*, and *"it is really important that we look at technology."*

130. The Committee noted that technological innovation is a fast-moving process and that Regulation 45 of the Regulations requires proposals for any alternative measures to be made within 18 months. Beyond that point, the evidence review of the effectiveness of the Regulations as they stand is not for four years. Victoria Jones of Welsh Government assured the Committee that there was ongoing continual review of the Regulations and that *"we would always be considering new and emerging technologies"*⁷¹, but the Minister said that it was necessary to have a cut-off date in the legislation for the consideration of proposals under Regulation 45.

⁶⁹ Paragraph 136, Economy, Trade and Rural Affairs Committee, 25 November 2021

⁷⁰ Paragraph 114, Economy, Trade and Rural Affairs Committee, 30 September 2021

⁷¹ Paragraph 120, Economy, Trade and Rural Affairs Committee, 11 May 2022

Recommendation 8. The Welsh Government should prioritise any suitable alternative proposals that utilise technology rather than closed periods for spreading, or ‘farming by calendar.’

Recommendation 9. The Welsh Government should provide the Committee with an update on its consideration of alternative proposals by early 2023 and further regular annual updates on the consideration of alternative measures, in advance of the formal regulatory review.

Future-proofing the regulations

131. Environmental organisations argue that the only way to future-proof the regulations is by applying them cross-territory. One important argument is the need to protect against negative impacts of intensification of farming. But Rachel Sharp of WTW also stressed the importance of regulations that are future-proofed not just for fairness, but for future investment into Wales:

“Now, it's absolutely critical that we have everybody applying the same regulation across the board, because then investors then understand the regulatory baseline that they are going to be investing into.”⁷²

⁷² Paragraph 146, Economy, Trade and Rural Affairs Committee, 25 November 2021

10. Reviewing the regulations

132. The Regulations include a requirement for review every four years. While the Committee understands the need for a reasonable timeframe to allow the Regulations to 'bed in', for infrastructure to be put in place and for enforcement and implementation data to be collected, four years is a long time. The Committee accepts that the Minister has said she is open to considering alternative approaches beyond the 18 month cut-off set out in Regulation 45. However, having assessed the evidence provided, the Committee is of the view that Welsh Government should review the Regulations at the earliest possible opportunity, and that preparatory work to improve the Regulations should start in good time. Welsh Government should take account of the work of this Committee when reviewing the Regulations, and as a Committee we intend to return to this issue ahead of feeding into the Welsh Government's review, later in the term of this Sixth Senedd.

Recommendation 10. The Welsh Government should review the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 at the earliest possible opportunity, and ensure that preparatory work to improve the Regulations, including with the introduction of alternative measures, should start in good time. The Welsh Government should take account of the work of the Economy, Trade and Rural Affairs Committee when reviewing the Regulations.

Annex A: List of oral evidence sessions

The following witnesses provided oral evidence to the committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed on the Committee's website.

Date	Name and Organisation
30 September 2021	<p>Martin Cox, Head of Operations for North East Wales, Natural Resources Wales</p> <p>Robert (Bob) Vaughan, Sustainable Land Manager, Natural Resources Wales</p>
25 November 2021	<p>Gareth Parry, Senior Policy and Communications Officer, Farmers' Union of Wales</p> <p>Aled Jones, Deputy President, National Farmers' Union Wales</p> <p>Rachel Sharp, Deputy Director, Wildlife Trusts Wales</p> <p>Creighton Harvey, Independent Trustee, Afonydd Cymru</p>
11 May 2022	<p>Lesley Griffiths MS, Minister for Rural Affairs and North Wales and Trefnydd, Welsh Government</p> <p>Victoria Jones, Head of Agriculture, Sustainable Development Division, Welsh Government</p> <p>Eifiona Williams, Head of Water, Welsh Government</p> <p>Andrew Chambers, Legislation Development Team Leader, Welsh Government</p>

Annex B: List of written evidence

The following people and organisations provided written evidence to the Committee. All consultation responses and additional written information can be viewed on the Committee's website.

Reference	Organisation
APR 01	Fish Legal
APR 02	Individual Response
APR 03	Individual Response
APR 04	Individual Response
APR 05	Individual Response
APR 06	Individual Response
APR 07	Individual Response
APR 08	Individual Response
APR 09	Individual Response
APR 10	Individual Response
APR 11	Individual Response
APR 12	Pontardarwe and Swansea Angling Society
APR 13	Gwent Angling Society
APR 14	Welsh Water
APR 15	Carmarthenshire Fishermens' Federation
APR 16	Country Land and Business Association in Wales
APR 17	Wildlife Trusts Wales
APR 18	Individual Response
APR 19	Farmers' Union of Wales

APR 20	NFU Cymru
APR 21	Individual Response
APR 22	Tenant Farmers Association
APR 23	Individual Response
APR 24	Individual Response (Welsh only)
APR 25	Farming and Wildlife Advisory Group, Cymru
APR 26	Individual Response
APR 27	Nature Friendly Farming Network Cymru
APR 28	Individual Response
APR 29	Individual Response
APR 30	Salmon and Trout Conservation Cymru
APR 31	Wales Environment Link
APR 32	Natural Resources Wales - Supplementary Evidence

Additional Information

Title	Date
Letter from Minister for Rural Affairs and North Wales, and Trefnydd (Paper to Note 2.5)	9 December 2021
Letter from Chair to Minister for Rural Affairs and North Wales, and Trefnydd (Paper to Note 2.6)	9 December 2021
Letter from National Farmers Union Wales (Paper to Note 2.7)	9 December 2021
Letter from Minister for Rural Affairs and North Wales, and Trefnydd (Paper to Note 2.3)	20 January 2022
Letter from Chair to NFU Cymru (Paper to Note 2.8)	20 January 2022
Letter from Wildlife Trusts Wales Response to NFU Letter (Paper to Note 2.9)	20 January 2022
Wales Environment Link Supplementary Evidence (Paper to Note 2.15)	20 January 2022
Welsh Government Evidence Paper - The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 (Item 3)	11 May 2022