

Economy, Trade and Rural Affairs Committee Review of the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021

Welsh Government Response

5 October 2022

1. The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 are an integral part of our efforts to tackle the climate and nature emergencies. They recognise the limits of the global environment by promoting resource efficiency and protecting our health and natural environment through healthy, functioning ecosystems that support ecological resilience.
2. Whilst the primary aim of these Regulations 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, these Regulations deliver against a wide range of Wales' responsibilities and provide a holistic response to environmental challenges related to agricultural production.
3. The measures have their basis in long standing good practice recommendations and help farms to reduce harmful emissions and improve the management of our precious natural resources, supporting the agricultural sector to tackle and reverse the damage to our natural resources identified in the State of Our Natural Resources Report (SoNaRR) for Wales 2020 and to reduce the negative impacts of agriculture on biodiversity. This is complemented by a significant package of support to assist the sector in making necessary adjustments to meet the requirements.
4. The Welsh Government is grateful to the Committee for its work in considering these important Regulations. We are pleased to see the Committee's understanding of the need for regulation and the importance of getting regulation right, for both farmers and the environment. Our response to the Committee's report set out below accepts, either fully or in part, 9 out of 10 of the Committee's recommendations. We look forward to working with the Committee to provide members with the appropriate evidence and support the effective scrutiny of these important Regulations.

Recommendation 1.

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

Response:

As formulated by the Committee, the Welsh Government is unable to accept this Recommendation.

The current Regulations have never incorporated a derogation process. As the Committee notes in its report, a derogation was available to farms in former Nitrate Vulnerable Zones meeting specific detailed criteria and upon submission of a successful application. This process was made available through a specific and time limited opportunity granted to the UK by the European Commission to set the limit of nitrate application of livestock manure to grassland in a Nitrate Vulnerable Zone at up to 250kg per hectare per year, this decision expired in 2016. Invitations for applications for such derogations ceased in 2019. At no point did derogation enable the application of nutrients above the level of crop need.

Under the Co-operation Agreement between Welsh Government and Plaid Cymru, we have identified and agreed a series of actions to provide further support to the sector in the implementation of these regulations including our intention to consult on a licensing scheme in the autumn. These are set out in the Written Statement published on 5 October 2022 <https://gov.wales/written-statement-cooperation-agreement-agricultural-pollution>.

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.

Response:

Accept.

Welsh Government will supply the Committee separately the details of our significant package of support to the sector.

The Regulations are based on long standing good practice recommendations, and some farmers will see minimal impact, particularly those already following good practice, whilst we have recognised others will need time and support to improve.

Funding and support needs to individual farm businesses will therefore differ depending on the level of intervention necessary where changes to the farm

business are needed. The options for implementation can vary considerably depending on the type and scale of farm business and its current practices.

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.

Response:

Accept.

It is the Welsh Government's view that the infrastructure requirements of the Regulations do not significantly differ from the pre-existing regulatory baseline.

The impacts on the planning system and communities, other than the benefits of a safer, healthier environment and sustainable food production are, therefore, not significantly different from the status quo.

The greatest change provided by the Regulations is clarity to farm businesses on the actions to be taken to prevent pollution, which has been an offence for decades, and the ability of the enforcement body to act where activities which cause pollution are undertaken, as opposed to acting only once pollution has already damaged the environment.

The planning process has been designed to assess the appropriateness of developments in respect of community and business interests and takes such matters into account. The available evidence demonstrates the need for improvements in the management of manures.

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.

Response:

Accept.

The Welsh Government would be happy to summarise the key points of the service level agreement in respect of the resources for enforcement by Natural Resources Wales of the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 upon agreement.

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.

Response:

Accept.

Welsh Government is content to provide views on our preferred approach to implementation of the Regulations, recognising that decisions on the approach to enforcement of the Regulations are a matter for Natural Resources Wales, as independent regulator, in accordance with its statutory obligations and internal policies and procedures.

Officials meet regularly with representatives from NRW on all matters relating to the Regulations and there are established relationships to address concerns. It is the interests of both Welsh Government and NRW for the established relationships with stakeholders and farmers to be maintained while ensuring the environment is protected from agricultural pollution.

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.

Response:

Accept in part.

Natural Resources Wales is responsible for enforcing the Regulations, in accordance with its statutory obligations and internal policies and procedures. In many instances the Regulations do not differ significantly from the pre-existing regulatory requirements, including those related to slurry storage and the actions farms would need to undertake routinely to prevent pollution, in accordance with regulatory requirements and the recommendations of the statutory Code of Good Agricultural Practice.

Established processes to address issues related to tenancies exist in respect of other regulatory requirements, including the pre-existing SSAFO Regulations, the management of holdings under TB restrictions and the now revoked NVZ Regulations.

Welsh Government officials attend meetings of the Wales Land Management Forum sub-group on a monthly basis. Minutes of the sub-group meeting are published online on the NRW website and the Forum provides an important opportunity to discuss all matters relating to agricultural pollution, not only regulation. Any

representations made through the Forum, or any other mechanism, on these issues will be considered in detail and, where appropriate, will form part of the mandatory 4-year review. General scrutiny sessions offer opportunity for the Committee to receive further updates outside the review timeframe.

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.

Response:

Accept in part.

The Welsh Government does not have the authority to direct the members of the Wales Land Management Forum sub-group but is happy to commend the Committee's recommendation to the sub-group for its consideration. At the sub-group's meeting in May, prior to the publication of the Committee's report, members discussed whether the group should update the report and favoured dedicating resources to revised priorities. We would work with the group should it decide to update the report.

The Welsh Government will provide a separate summary of how the Regulations deliver the recommendations of the Wales Land Management Forum sub-group's report.

Recommendation 8.

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

Response:

Accept in part.

Any proposals for alternative measures submitted in accordance with Regulation 45 will be considered. All proposals will be treated equally. Prioritising proposals based on topic would be inappropriate. An evidenced based approach will be taken to all alternative measures proposals.

Developments in technology will also be considered as part of the 4-year review, where appropriate. Officials receive regular updates on the development of technologies ranging from remote sensing to anaerobic digestion. The review cycle will provide an opportunity to incorporate any technological developments, provided they ensure an equal or better environmental outcome.

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.

Response:

Accept in part.

The Regulations require a statement to be made by 1 April 2023, explaining what action will be taken where viable proposals for alternative measures have been made. The effectiveness of the regulations will be reviewed every 4 years, as required by the Regulations. This inbuilt timetable in the current regulations ensures a balance between periods of stability with a detailed programme of monitoring, with regular review of the measures' effectiveness.

General scrutiny provides the Committee the opportunity to request further updates.

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.

Response:

Accept.

The earliest opportunity to review the Regulations is following the receipt of proposals for alternative measures and, subsequently, the 4-year review. The Welsh Government will take account of the work of the Committee when reviewing the Regulations.