

Senedd Cymru
Pwyllgor yr Economi, Masnach a
Materion Gwledig
Rheoliadau Llygredd Amaethyddol

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Ymateb gan: Fish Legal

Welsh Parliament
Economy, Trade, and Rural
Affairs Committee
Agricultural Pollution
Regulations

Evidence from: Fish Legal

Fish Legal is a not-for-profit membership association. We use the law on behalf of anglers to fight pollution and other damage and threats to the water environment throughout the UK.

Fish Legal is concerned with continuing agricultural diffuse pollution and the failure of water bodies to reach both good ecological and chemical status (as defined under WFD) in Wales.

In 2010, 2015 and 2021, Fish Legal and the Angling Trust launched legal action along with WWF against the UK government for failing to meet their WFD obligations.

At present in Wales, 60% of waterbodies in Wales are failing to reach their statutory targets because of the high levels of phosphate which come primarily from agriculture.

One of those waterbodies, the River Wye (an SAC with numerous SSSIs in its catchment) has been blighted by algal blooms caused by pollution from the poultry industry high up in its headwaters where there are no other phosphate inputs. The Welsh Government and its agencies remain in denial over the problem as well as avoiding the logical conclusion as to cause - with the outcome being that little if anything has been done to stop the influx of phosphates to this and other rivers in Wales. Fish Legal therefore welcomed the introduction of the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 which come belatedly on the heels of the English farming rules which were introduced in April 2018.

Over the border in England, despite promises from Defra and the EA to tackle diffuse agricultural pollution and their undertaking in 2015 to publish diffuse water pollution plans (DWPPs), little has been done to make use of measures including the "Rules" to reduce pollution.

The Welsh Rules effectively fill the gap in Welsh legislation to meet the Water Framework Directive requirement to implement "basic measures" to control or prevent diffuse pollution including "prior regulation, such as a prohibition on the entry of pollutants into water, prior authorisation or registration based on general binding rules where such a requirement is not otherwise provided for under Community legislation" (Article 11 (3) (h)).

The Welsh rules are much more detailed than the English equivalent with six schedules and a complex, phased roll-out, covering nutrient management planning; sustainable fertiliser applications linked to the requirements of crops; protection of water from pollution related to when, where and how fertilisers are spread; and manure and silage storage standards. They make it an offence for any person to contravene its provisions, for which they may be liable to a fine.

As they replace the Nitrate Regulations, for those farms which were not in "Nitrate Vulnerable Zones" in January 2021, the provisions relating to nitrate fertilisers will not come into force for several more years, including limits on the amount of nitrate fertilisers that can be used, storage of manure other than slurry as well as the keeping of records relating to use of nitrate fertilisers. A more rapid implementation would be welcomed.

However, the provisions relate mostly to the spreading of nitrogen fertiliser: for instance, it must not be spread if there is a significant risk of nitrogen getting into surface water, taking into account the conditions of weather and topography.

It is a disappointment that the regulations do not cover cattle poaching and other forms of agricultural pollution, including from phosphates; they also seem to create a loophole for non-NVZ land which begins to show an impact from excessive nitrogen pollution before the 2023 and 2024 (dates by which the regulations come into effect for those areas).

In the light of the Welsh Senedd vote on annulling the regulations in March 2021 and the recent National Farmers' Union Cymru legal challenge, we would emphasise that we do not believe that these regulations are disproportionate or that there is any unlawfulness in the process by which they came into force.

We note that the NFU suggest that "*farmer-led voluntary initiatives, ... supplemented by targeted and proportionate regulation*" would be sufficient (<https://www.nfu-cymru.org.uk/news/latest-news/nfu-cymru-finalising-preparations-to-launch-legal-challenge-over-damaging-nvz-regulations/>) to deal with agricultural diffuse pollution.

However, it is clear from what has happened in England - in particular with sensitive sites in agricultural areas suffering from agricultural diffuse pollution and where the sites are failing to meet favourable status - that voluntary measures alone do not work.

What is needed is proper funding of NRW to visit farms, investigate agricultural pollution and take enforcement action under the regulations. A failure to enforce or properly regulate renders the Regulations meaningless.

The Welsh Regulations are far more comprehensive and far reaching than their English equivalent and provide a sweeping basic measure to prevent pollution.

We support the Regulations and believe that they should be implemented and enforced across Wales. But they must be revised to include other forms of

agricultural pollution as a standard for the whole of Wales. We see no alternatives to regulation. Above all, sufficient resources need to be ring-fenced for their enforcement.