

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

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Ymateb gan:

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

Evidence from: Carmarthenshire
Fishermen's Federation

This response has been prepared by Creighton Harvey, our representative on the Wales Land Management Forum agricultural pollution subgroup (WLMF). Creighton is also a board member of Afonydd Cymru. He is a retired solicitor who had thirty years of experience of prosecuting in both magistrates' and Crown Courts. He has followed pollution prosecution incidents through the magistrates's courts. He has spoken at Farming Connect on farm training events. We are also on the steering committee of Project Slurry at Coleg Sir Gar. We represent angling interests in Carmarthenshire, an area with one of the highest rates of agricultural pollution in Wales, which is linked to the high concentration of dairy farms operating slurry systems in that county.

The committee is seeking views on five particular areas and we will deal with those areas in turn.

1. The positive aspects of the current all-Wales approach

The Regulations apply to all agricultural holdings in Wales. They deal with a particular aspect of farming, namely the storage and application of animal manure. The storage of slurry has been governed by the Silage, Slurry and Fuel Oil (SSAFO) regulations, which have applied since 1991. The slurry spreading process was merely the subject of guidance under the Code of Good Agricultural Practice (CoGAP), the most recent edition of which was published in 2011. Under the voluntary approach the number of point source pollution incidents has increased as has the number of rivers failing the Water Framework Directive targets.

The farming unions have been critical of the all Wales application of the Regulations saying that it is unfair and punitive to farmers who have not been convicted of any pollution offences and those who farm in areas where the number of pollution offences is lower. There is little doubt that had the legislation been applied to discreet Nitrogen Vulnerable Zones, then the complaint would have been that they put farms within those zones at a competitive disadvantage. We can think of no area of criminal law where the law applies to those areas where offences are most prevalent. The law applies across the whole jurisdiction to protect all and to make all subject of regulation.

Although the regulations apply to all holdings, their impact on those holdings is governed by the nature of the farming undertaken. If a farm does not rely on a slurry based system then the regulation is light. If a slurry based system is used, with an increased risk of pollution, then regulation is appropriately more demanding.

Unions and politicians have stated that the legislation poses a threat to small family farms. Our experience following cases through the courts has shown that polluting farms range from those with 70 or 80 cows to those milking up to two thousand cows. What is common to all is the bad management of slurry. Size of farm is not the issue, it is the quality of infrastructure and management that determines whether a farm is a polluting farm. Regulation must apply to all, across the whole territory. Educational and financial assistance should be given to encourage compliance.

A pan Wales approach will avoid the need for piecemeal and time consuming extension of NVZs in response to inevitable intensification of the dairy industry in areas where it was previously not practised. The May 2020 minutes of the WLMF refer to New Zealand style dairy units, showing little regard for environmental standards, being established in areas new to intensive dairying. There is also evidence of intensive dairying moving into higher, more sensitive catchments. Areas exempt from regulation will encourage the spreading of slurry in unregulated areas. Anything other than a whole territory approach would be simply unworkable.

One aspect of regulation is often missed. It creates a level playing field for farmers and contractors alike. The October 2019 minutes of WLMF show evidence from two agricultural contractors. They referred to refusing a contract to spread slurry which would have been in breach of the voluntary CoGAP guidelines and likely to cause pollution. Another contractor did the work resulting in a stream being polluted. Had there been regulation and not mere guidance, this could have been avoided. A pan Wales approach would encourage responsible slurry spreading across Wales. There would be no advantage in farming in a cheaper, more damaging way.

2. The negative aspects of the current all-Wales approach

We have dealt with the suggested unfairness of an all Wales approach under paragraph 1. We do not accept that an all Wales approach is unfair. It provides an approach consistent with the risk and clear working practices for contractors and farmers alike. It is the only workable solution.

3. The process for developing the current approach

We will not comment on this as the process is subject to Judicial Review instigated by NFU.

It does occur to us that the inquiry by the committee should proceed without consideration of this issue and in any event await the outcome of the Judicial Review.

4. The alternatives to the current approach

The regulations provide eighteen months in which the farming unions have been given the opportunity to devise schemes of measures which could provide the same or better result than The Regulations. We are, through the WLMF, attempting to devise such a scheme but participants in any such scheme must be subject of the sanction of the Regulations in the event of pollution occurring or being likely to occur.

5. If an all-Wales approach were to be retained, how the current approach could be improved

We welcome the regulation of nutrient management set out in the Regulations. The measures which become effective from 1st April 2020 bring into law the nutrient management provisions set out in chapter 5 of CoGAP. The voluntary nature of CoGAP in relation to nutrient management has not prevented bad practice, indeed, CoGAP seems to have been observed more in the breach. Evidence of this was given by the two agricultural contractors referred to above.

Soil protection and the protection of water courses from excess phosphate also need to be brought under regulation as voluntary guidance has failed here too. An example of this can be seen in the growing of maize. Maize is recognised as a crop which, when badly managed, can cause soil erosion and nutrient and pesticide contamination of watercourses. The problems are listed in chapter 4 of CoGAP where the problems caused by maize growing are set out. The advice is that maize should be grown on flat ground with a low risk of flooding. It should be undersown or a cover crop planted as soon as possible after harvest. The Maize Growers Association advice is that early maturing strains should be grown and harvested by the end of September.

Much maize growing occurs on flood plains, without undersowing or post harvest cover crops and much of it is harvested up to late October.

Welsh Water are running undersowing trials on the Western Cleddau and providing funding for undersowing. This is to protect drinking water from sedimentation and nutrient and pesticide contamination. Undersowing or cover crop planting should already be taking place.

One does wonder if, like with the use of slurry systems, there is not the will to manage properly without regulation being in place. Bringing much of the guidance set out in chapter 4 of CoGAP would be a good place to start.

Conclusion

We welcome The Regulations, however, there must be funding of NRW to ensure robust regulation and enforcement if necessary. Funding should be made available to assist farmers to be compliant. The Regulations need to be strengthened by further regulation to prevent phosphate pollution and to protect soils.

Regulation across Wales is the only workable model.