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

Evidence from: Farming and
Wildlife Advisory Group, Cymru

Introduction - FWAG Cymu's Principal Interests

FWAG Cymru (Farming and Wildlife Advisory Group, Cymru)

FWAG Cymru aims to encourage optimal conservation and environmental performance on all farms small and large; intensive and extensive. It seeks to stimulate the management of an attractive, living countryside by encouraging the integration of sustainable farming with the conservation or enhancement of wildlife habitats and landscape, in ways which can benefit everyone. The organization achieves this by continuing a farmer-led approach to conservation throughout Wales, achieved through inspiring and enthusing farmers and landowners as they build more environmental management into their farming operations.

A main focus of FWAG Cymru's work and of relevance to this inquiry is soil nutrient management. We produce plans for most of our members and also other clients seeking to ensure best use is made of slurry and manure on-farms, reducing any risk of water quality issues. We guide and assist our members with the implementation of their Glastir Advanced nutrient management plans, help farmers with Sustainable Production Grant and Farm Business Grant Yard Covering applications; both these schemes aimed at reducing agricultural pollution via a focus on improved slurry and manure storage as well as efficient clean and dirty water separation. The advice is delivered by FACTs qualified people within our team, some of them with very many years' experience in the industry.

FWAG Cymru very much appreciate the opportunity to comment on these regulations. We are fortunate to have Bob Merriman on our team who formerly was a pan -England and Wales Policy Lead on the Silage, Slurry and Agricultural Pollution Oil regulations- The key agriculture- focussed water pollution legislation across England and Wales, since its introduction in 1991.

Views on the Five Specific Questions posed:

1. The Positive aspects of the current all-Wales approach?

For the reasons outlined below, we find it difficult to identify positive aspects of these particular Regulations- brought in

without wider consultation, apparently to address an increase in serious water pollution incidents arising from agricultural premises. One possible positive outcome is to rationalise slurry calculation and storage requirements in just one piece of legislation – and not across two, different pieces of legislation – the former NVZ (Nitrate Vulnerable Zone) Regulations 2014 and the Silage, Slurry and Agricultural Fuel Oil Regulations 2010.

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

There are several important and unfortunate negative aspects, including:-

2.1 There is over-whelming reliance on effectively designating all of Wales as a “NVZ” – as compared to just 2.4% designated in 2014. The National Resources Wales (NRW) as the main adviser, suggested in the 2016 NVZ Consultation – to only increase the designated area to some 8% i.e. to focus on those areas where documented concerns suggested further actions were needed, to better manage nutrient enrichment in specific areas of Wales.

It should be noted that there is little, if any, evidence of any clear reduction in the nutrient status of Waters in Wales, resulting from the progressive designation of new “NVZ Areas” across Wales, since their first introduction since 1998. Shortly after the 2016 Consultation commenced, an apparently “leaked” report from NRW did, however, show a deterioration in the quality of one NVZ Area, Bosherton Ponds in Pembrokeshire – thought to be linked to un-intended consequences, of land use and extending livestock grazing, following designation.

It should be noted that the NVZ Regulations are derived from EU legislation, so are inevitably a “blunt, complex tool” to address the range of complexities with regard to agricultural pollution, across most of Europe. Success in addressing specific and rather different problems in Wales must therefore be uncertain. It must be noted that Welsh Government’s main published concerns have been to address an apparent upsurge in serious water pollution problems linked to, but not always arising, from agricultural practices. Some of the high- profile incidents of concern to the Welsh Government have arisen on farms, but from “industrial- type anaerobic digestors”, dealing in part at least, with “off-farm wastes”. To address this and to reduce the likelihood and severity of future such incidents, surely it is appropriate to develop and implement “Standards of Construction/Operation” of these relatively new, complex industrial- type installations?

2.2 In contrast, The Silage, Slurry and Agricultural Fuel Oil regulations were made in 1991, as UK legislation, crucially, tailored to address a major upsurge in the then most notable sources of agricultural pollution – Silage, slurry (as are the

apparent main sources of concern now) and fuel oil. They were very successful in this regard (we can provide evidence/data to support this assertion). It must be noted that a Welsh Government review of these regulations was also in progress, with suggestions made to enhance their suitability going forward, but this appears to have been overlooked perhaps in the rush to push through the 2021 Regulations.

2.3 Previous NVZ designations in Wales have all come with the potential to "De-designate"- if data showed a sustained and acceptable improvement in water quality in so called "Polluted Waters NVZ area"- (the majority type of NVZ areas in Wales), there was potential to "De-designate". This can act as an incentive to farmers to pursue systematic, positive actions to improve water quality. This does appear to have been widely promoted and now, with an all- Wales designation and no such facility included in the 2021 Regulations there is no such incentive to improve water quality.

2.4 Designation of all of Wales as an "NVZ" inevitably impacts on substantial areas, or water bodies, where there is no evidence of water quality needing such additional regulations put in place locally. This is particularly the case in respect of "extensive", beef and sheep farmers, especially in the upland areas of Wales. This inevitably leaves a sense of serious injustice- on many thousands of farmers, currently over 7000, to have substantial and tedious record-keeping requirements imposed on them- when there is no evidence to support such a regulatory approach. This when the Government is allegedly striving to reduce the farming industry (and its regulating bodies') paperwork load.

The "One set of rules fits all- approach" here is plainly unjust and not necessary. The absence of a widely- circulated Regulatory Impact Assessment, ahead of these Regulations being made and to help to justify such regulations simply fuels this in- justice.

2.5 Some of the FWAG Cymru members have already sold off their cattle as a consequence of yet another issue to contend with as regards their beef enterprise. It seems that for many this is the straw that breaks the camel's back - already farmers have onerous paperwork commitments as regards cattle movements, passports, TB etc. Clearly, this is of deep concern given the major agricultural and nature conservation benefits of cattle grazing. Farms with no manure source become more reliant on importing artificial fertiliser to farm with subsequent sustainability problems. Cattle grazing is essential for habitat management and enhancement. The loss of cattle, particularly from ffriddoedd, marshy grassland, flower-rich habitats, scrub, woodlands and hedge-bound fields is lamentable and must be reversed. Their dung, in particular if kept organically, provides a food source for insects and hence birds with their hooves causing puddling providing insect habitats again, particularly in wetland areas.

2.6 The imposition of these regulations with no appreciation of the value of developing such initiatives as the ones listed in Section 5 below is a major blow to those working hard to develop them. It is also casting doubt on sincerity the Government's rhetoric of recent years - wishing to work in partnership, collaboration and co-operation with farmers.

3. The process for developing the current approach?

3.1 FWAG Cymru is especially concerned at the approach Welsh Government took developing these regulations. Quite simply, discussion was confined to a small group of organisations set up by the Welsh Government- - the Land Management Forum. Whilst these included the main farming organisations and the main regulator- NRW, there was no dialogue with other groups and organisations with key interests, responsibilities and crucially expertise in nutrient management on farms- such as FWAG Cymru and a host of others. That the draft regulations were seemingly produced very hastily- (widely described as a "Cut and Paste of enhanced NVZ Rules") simply added to the feeling that the Welsh Government had made its mind up, very quickly and through the Land Management Forum, simply pushed the draft proposals through, without any wide discussions. FWAG Cymru submitted a substantive response to the Review of the NVZ Regulations, but that was then seemingly ignored. As mentioned above, FWAG Cymru has a long, substantial record and expertise in delivering effective Nutrient Management planning in Wales, so is well placed to provide advice to Welsh Government.

3.2 As far as this review is welcomed, as providing a possible opportunity to first pause- to consider what the problem actually is, the extent of the problem and what options are available to deal with it and provide solutions that address the actual issues. -The problems are BELIEVED to be, or include as an important element- serious water pollution incidents, involving slurry and silage from livestock and serious pollution arising from a small number of "anaerobic digester" units.

3.3 It may well be that water pollution, in particular, from agriculture in SOME areas, is currently unacceptable, although it must be recognised that the scale and extent or causes of such pollution have yet to be properly published. All we have seen are largely unsubstantiated reports of "water pollution incidents being too frequent", without any analysis- to the nature, source- by sector or farm type, location, or the actual longer- term trend in such incidents. It must be recorded again, as mentioned above, that NRW, in its comprehensive evidence for the last (2016) review of the NVZ Regulations, only suggested designating a total of 8% of Wales as an NVZ.

Following that review, it APPEARS- (the emphasis here is simply that we have not seen clear evidence) that a relatively small number of albeit serious pollution incidents has driven a need to act to stem the flow of these incidents.

3.3 It must be stated that the principal legislation to manage these sources of incidents has been the Silage, Slurry and Agricultural Pollution Regulations 2010- SSAFO which Welsh Government consulted on, shortly before the NVZ Consultation, but apparently Welsh Government did not pursue at that time. The SSAFO regulations include powers to NRW- to serve a Notice and require improvements to silage or slurry facilities "if there is a significant risk of water pollution". ie NRW has long had strong powers to require improvements to manage potential pollution risks. Surely it is more appropriate to review the scope of these powers and fine-tune, if thought necessary (after all Welsh Government has consulted on reviewing the SSAFO regulations).

3.4 The main aim of the NVZ Regulations is to better manage and control loss of nutrients into the water environments, rather than point- source incidents, that seem to have attracted attention.

3.5 The failure to make use of the opportunity to possibly update the SSAFO regulations (hardly changed since 1991) and crucially the failure of NRW to widely promote compliance with these regulations (as predecessor organisations did very vigorously) is very unfortunate. But this Review brings an opportunity to address these shortcomings in a constructive manner, acceptable to the agriculture industry to provide better protection to Wales' water environment in particular.

We have in our team, the "lead author "from the former National Rivers Authority for the making of the SSAFO regulations 1991 and who also acted as the "Policy Lead" for the Environment Agency, pan England and Wales in their on-going implementation. These regulations were framed specifically to counter a major upsurge in water pollution, mainly from silage effluent and livestock slurry, recorded throughout the 1980s. This was done in consultation with the then Ministry of Agriculture and Food and the agriculture industry.

The significant drop in such pollution incidents that followed, demonstrated their success. But this success was not simply a case of "new, firm legislation", but included a co-ordinated publicity campaign, dialogue with the industry as a whole- not just the farming unions etc. and with a carefully crafted support package- including a grant aid scheme. This required farmers to obtain agreement from the then NRA on the pollution - prevention measures before farmers obtained grant. So suddenly, the regulator and potential polluters were engaged in constructive dialogue- to agree suitable measures.

3.6 In the case of the 2021 regulations, funding options- for larger slurry stores, for example, may be a constraint. But experience in Wales- a high rainfall area, has shown time and time again, that the fundamental difficulty in respect of livestock slurry- is excess rainwater mixing with livestock excreta, often doubling or trebling actual "slurry" requiring safe storage and application to land- which is then more of a problem, as that rainfall can at the same time, render the land unsuitable to safely apply or accept slurry etc. The operation is then a burden to farmers and arguably- more of a "waste disposal operation", as nutrient concentrations are reduced, due to excess rainfall and the slurry more liable to run-off saturated land.

The Farm Business, Yard Coverings and the Sustainable Production grants have been used to some extent to address this very issue but these schemes have been woefully underfunded with the restrictive eligibility criteria meaning that they are not available to many farmers.

4. Alternatives to the Current Approach?

4.1 We strongly suggest that detailed consideration is given to addressing the apparent problem- "too much slurry, produced in wet weather"- when safe management is so difficult and thought to be the main cause of the problem here. This may well involve more effective separation of slurry and rain water, especially as climate change pressures brings less predictable, usually wetter rainfall events. Wales needs farmers to be in a position to control how much slurry they produce and when, be in a position to store it safely- to apply to the land, at times when crops can realise the useful fertiliser value of the slurry.

4.2 Encouragement is also needed for farmers to more carefully manage farmyard manure (FYM), which given its nature, is easier to store and transport for safe application to land.

We must get away from the with "how do I dispose of this excess slurry at the least cost approach" (when then due to dilution by excess rainfall, the slurry has very little financial value- less than the cost of safely spreading to land).

Slurry management must become less of a "BURDEN". Farmers need to be better informed of the potential value in spreading slurry at the right time, place, rate and method, to better realise its fertiliser value and so value this as a resource, not a "waste product", then be encouraged, persuaded to manage it far more carefully.

4.3 A fundamental problem with the current position is that with the simple, not fully thought-out approach of "having all of Wales an NVZ", is that all farmers are then seen to be penalised- with very tedious record-keeping requirements for thousands who are

providing no real pollution threat. In the case of extensive upland beef and sheep farmers, from the limited evidence provided by Welsh Government, there is very little, if anything to suggest these enterprises are responsible for reported water pollution problems.

As a result, it seems likely that cattle rearing in the uplands will fall as an un-intended consequence, as mentioned above in Section 2.5.

We need a strategy that deals with the actual problems, not the "regulate all, because it is easy to do" current approach. Otherwise, this will simply serve to promote negative responses - from the majority of farmers that cannot be held responsible for the perceived current problems - into a "how can I get around these rules approach". Then deterioration, not improvement is likely.

4.4 In implementing new, usually stronger regulations, it is crucial that farmers, especially the large majority who are prepared to act responsibly, are given appropriate opportunity to be recognised for their positive actions. As framed, Regulation 44 in particular- to consider alternative approach, could help develop a form of Earned Recognition (given the previous NVZ Regulations themselves included potential to "de-designate"- if sustained improvement is recorded- i.e. provide for "Earned Recognition").

Rapid development of an "Earned Recognition" scheme, to accompany these regulations, if they are retained, is therefore essential.

We draw your attention to the inclusion of this approach in the regulations covering intensive, (and larger, so potentially higher risk) pig and poultry units- where documented good performance is rewarded with a reduced inspection regime and so considerably lower recharge costs by NRW.

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

5.1 If an All- Wales approach is retained, there must be a focus on problem areas, sectors, land use practices- that are demonstrated as requiring corrective action. Good quality evidence must be provided to justify the very onerous rules on all farms in Wales.

Whilst there is consideration given to famers to keep less detailed records if their stocking density AND manufactured fertiliser usage is minimal, this approach needs to be developed considerably more to address the strong feeling of injustice here.

5.2 From our experience in developing and helping deliver Nutrient Management Plans, it is clear there is a very large variation in the nutrient composition of farm slurry and Farmyard manure- FYM. Good quality nutrient management planning and implementation

requires actual assessment of key nutrients in slurry and FYM. There is such assessment equipment available- at low- cost both in terms of capital and actual analysis. Much greater encouragement for farmers to obtain such assessments is needed.

5.3 An Earned Recognition approach needs to be urgently developed and put in place- so that those who are clearly adopting good practice and being seen to be complying with regulations are then rewarded- with "More trust and less punitive regulation".

5.4 "Closed periods- for slurry spreading" appear to be of particular concern, especially as the dates chosen do not appear to reflect the longer grass- growing conditions that prevail in much of lowland Wales- compared to other parts of the UK. The concept of better thought-out non- spreading periods is understood, for example the nutrients within applications in say late November and December, may well not be effectively utilised. But it is strongly suggested that proper consideration is given to the position across lowland parts of Wales in particular. More flexibility may be needed - both in different areas and possibly, even from year to year- if account can be taken of rainfall and actual soil temperatures.

5.5 We are aware that there is on-going work with regards to "treatment of slurry"- to reduce its polluting potential. This needs to be encouraged and accelerated, if necessary and consideration to be given to utilisation of excess manure or treated slurry products to be utilised elsewhere- for example commercial and domestic gardens. There should be projects set up to use the excess slurry and those in close proximity to the current excess slurry producing areas.

5.6 Given the major influence rainfall has on volumes and management of slurry, there needs to be far more attention and encouragement for farmers to more effectively separate slurry from excess rainfall. Effective separation will then leave farmers "Decide when, where, how and in what quantities slurry etc. is applied to land"

And not as is often the case at present- excess rainfall drives increased slurry production, seemingly then forcing farmers to spread at in appropriate times, locations or rates. "Closed Periods" as those to be brought in as part of the 2021 Regulations, will not address this problem, but merely further reduce possible safe slurry spreading opportunities.

Grant schemes to update existing slurry and manure storage facilities as well as erect new ones should be made widely available to all cattle farmers with effective clean and dirty water separation methods generously funded.

5.7 Using the Control of Pollution Regulations 2021 in an attempt to regulate all farmers in Wales is un-justified. As there is no

clear evidence that we are aware of which shows the "NVZ Regulations" to be effective, there needs to be more- imaginative approaches- that the industry recognise as fair and proportionate. We suggest two considerations here:-

1. Following the 2014 NVZ Review, the then Environment Agency Wales progressed discussions with the main farming organisations- to develop a voluntary approach- at the time under the "Amber Light" title. It is unfortunate this was not continued by NRW. There have, however, been very useful initiatives from within the industry itself, notably:-
 - First Milk in Pembrokeshire - bringing in a useful and apparently voluntary nutrient off-setting scheme- to reduce nutrient losses into the Milford Haven Waterway- the largest area of concern with respect to nutrient enrichment within the 2016 NVZ Review.
 - The "Blue Flag Farming" initiative- developed by two dairy farmers in Pembrokeshire, as an apparently very useful initiative to better manage nutrients from the larger, more intensive dairy and cattle farms in particular- i.e. what we understand are the farms of most concern and driving the 2021 Regulations.
 - NFU Cymru's "Water Standard"- a comprehensive set of voluntary mechanisms that farmers can adopt on a voluntary basis with the focus to create a pan- Wales nutrient management approach, published in 2020 with funding from NRW. We note that NFU Cymru has also included, for well over a year now, a series of topical "pollution - prevention guidance" under the "Water Quality matters" banner, in its Farming Wales publication. Our team has been happy to cooperate with NFU Cymru in the production of these articles.

These three examples show that there is a genuine appetite within the industry in Wales- to develop a robust voluntary approach to better managing nutrients in Wales, so reducing losses to the wider environment in general and water in particular.

We strongly suggest that urgent dialogue is opened with the industry- to develop and facilitate such an approach.

2. Whole Farm Appraisals- WFAs may be a very useful tool, given WFA's flexibility- to address the wide range of circumstances at individual farms and differing pressures on the water environment in particular across Wales. WFAs may be useful, especially in those widespread areas where concerns do not relate simply to water pollution.

WFAs can take into account all key nutrient applications (including non man- made and imported materials) annually and can be tailored to reflect the wide range of challenges from farm drainage- yards, fields, tracks etc., taking account of topography, soil types, proximity to sensitive water features.

They can include consideration of potential crop yields, soil analysis, including organic matter, which can help indicate mineral Nitrogen.

Once a WFA has been completed, the farm will have nutrient recommendations- tailored to that farm, with recommendations, on a field-by-field basis regarding the most appropriate changes that may be needed to farm drainage, silage and slurry management etc.

We would welcome the opportunity to be involved in any discussions on both of these suggestions above or any other issues we have raised within this document.