

The Water Resources Control of Agricultural Pollution Regulations 2021: Setting the record straight

On 27th January 2021, the Minister for Environment, Energy and Rural Affairs, [announced regulations](#) covering the whole of Wales to protect water quality from agricultural pollution. The Regulations introduce a Nitrate Vulnerable Zone (NVZ) across the whole of Wales.

The [Regulations](#) are set to come into force from 1st April 2021 with transitional periods for some elements to allow farmers time to adapt and ensure compliance.

Whilst NFU Cymru recognises the role that farmers have to play in improving water quality, we continue to categorically reject an all Wales NVZ approach on the basis of [the evidence](#) that shows that a blanket approach is not needed, nor will it be effective.

The Regulations have been made under the 'negative procedure', however, they have been called in for debate and a vote on annulment in the Senedd. This will take place on **Wednesday 3rd March 2021**.

This NFU Cymru Briefing aims to address some of the false and misleading statements made to justify the introduction of the new regulations.

Number of agricultural pollution incidents

- Evidence over twenty years shows no discernible trend in the number of agricultural pollution incidents, upwards or downwards.
- A clear downward trend (28%) has been observed over the last three years.
- Many catchments across Wales have incurred **ZERO** incidents of agricultural pollution in the last ten years.
- Less than 12% (113) out of 953 WFD waterbodies have shown to be failing due to agriculture.
- The Impact Assessment accompanying the regulations has made no assessment of NVZ regulations on the number of agricultural pollution incidents.
- It is important to recognise that accidents do happen, a number of pollution incidents will happen every year and are completely unavoidable irrespective of where the regulatory baseline is set.
- A focus is needed to support farmers with advice and guidance on what to do when something does go wrong, by self-reporting and working with NRW early action can be taken to minimise the impact to the environment.

There are three agricultural pollution incidents per week

- References to 'three pollution incidents per week' needs to be understood in the context of the NRW classification system.
- The use of this statistic by Welsh Government is misleading as it includes all categories of incidents.
- NRW categorises incidents according to impact. Since 2016 NRW have categorised incidences as High or Low impact, this replaces the system of categorising incidences as 1/2/3/4
- High Impact Incidents include category 1 and 2 incidents. Category 1 – is defined as major, serious, persistent and/or extensive impact of effect on the environment and Category 2 - significant impact or effect on the environment, people and/or property
- Low Impact Incidents include category 3 and 4 incidents. Category 3 – is defined as minor or minimal impact or effect on the environment, people and/or property and Category 4 – substantiated incident with no impact.

- NRW data from 2001 to 2020 shows the number of category 1 and 2 (High) Impact agricultural pollution incidents has ranged from 12 to 40 with an average of 25.75 which is **one per fortnight**.

Welsh Governments approach aligns with the rest of the UK

- England and Scotland continue to designate discrete NVZ on the basis of the evidence. In England 55% of the land area is designated NVZ, in Scotland the area is 14%
- Based on the evidence from the Nitrates Review undertaken by NRW in 2015, the area of land under NVZ designation in Wales would increase from 2.3% to 8%
- Northern Ireland adopts a whole territory approach and implementation was supported by £140m of public funding at a grant rate of 60% over ten years ago.
- Northern Ireland NVZ regulations also include a number of important derogations on N limits for grassland farms and spreading in exceptional circumstances.

The regulations are proportionate

- The EU Nitrates Directive, which the regulations introduce, have the specific purpose of protecting waters against pollution from nitrates from agricultural sources.
- Based on the review undertaken by NRW, an increase in the area of NVZ was recommended from 2.3% to 8%. There is no evidence whatsoever to justify an all Wales NVZ approach.
- The regulations do not directly address agricultural pollution. No assessment has been undertaken by Welsh Government to understand the extent to which levels of agricultural pollution are expected to decline as a result of their introduction.

The impacts of the regulation are being exaggerated; others are raising levels of anxiety within the farming community

- Welsh Government published the regulations on the 27th January at the height of the COVID pandemic when the country is in full lock-down and high levels of stress and anxiety exist within Welsh communities;
- Welsh Government has done nothing to allay the concerns of the farming community. A month later Welsh Government has still failed to publish any guidance on the new regulations. Nor has Welsh Government published or promoted details of where and how farmers can access advice on the new regulations – who do farmers telephone for advice on the regulations?
- Welsh Government, through its own impact assessment, has failed to assess the impact on farm viability; the impact on employment; the impact on the supply chain; sectoral impacts including the impact on tenant farmers; the impact of farms under restriction due to bovine TB
- Large numbers of farmers are concerned that the 170kg N limit is a *de facto* stocking limit that does not exist in the rest of the UK where the 80% grassland derogation continues to apply. This decision was taken without consultation and without assessment of the impact.
- Overall Welsh Government has no idea of the impacts of the regulations it is introducing and is not in an informed position to judge whether the concerns of the farming community are exaggerated or not.

Financial support is being made available to help farmers with the new regime

- The Minister has announced just £11.5m of investment support despite the Impact Assessment identifying that £360m will be needed in upfront capital expenditure
- The level of investment support provided by Welsh Government is woefully inadequate and shows it does not understand the impact of its decision

- The whole territory NVZ decision in Northern Ireland supported by £140m of public funding at a grant rate of 60% over ten years ago.

If MSs do not support the NVZ regulations they are condoning agricultural pollution

- Welsh Government has provided no evidence that an all Wales NVZ will be effective.
- No evidence has been provided on the effectiveness of the NVZ action programme – the Welsh Government Nitrates Review consultation (2016) stated that “WG considers it too early to meaningfully analyse the success of the existing NVZ action programme” despite designations dating back to 2002.
- That regulation is part of the solution to tackling agricultural pollution is not in question by the industry, the question is what regulation?
- Fifty organisations across farming and the supply chain have written to the Minister agreeing that regulation forms part of the solution but the NVZ approach is categorically rejected.

NFU Cymru says one pollution incident is one too many

- NFU Cymru has long been clear that one pollution incident is one too many.
- NFU Cymru is disappointed that the Minister continues to use this statement completely out of context and is knowingly misrepresenting NFU Cymru position on this matter.
- NFU Cymru categorically rejects Welsh Government’s approach to regulation and the decision to introduce an all Wales NVZ.
- NFU Cymru is clear that an all Wales NVZ will not be effective in reducing levels of agricultural pollution
- NFU Cymru has worked tirelessly to put in place a framework that supports farmers to take action to improve water quality where this has shown to be needed
- This framework of support should be focussed upon advice, guidance, investment support, innovation underpinned by proportionate regulation.

The voluntary approach has failed

- The Minister’s statement dated 11th December 2019 stated that “a project exploring voluntary options jointly funded by NRW and NFU Cymru has been working to develop a draft water framework”
- In line with the Minister’s statement on the development of the draft water framework was completed in March 2020 and a Water Standard was produced.
- The project results and Water Standard was shared in letters to the First Minister and Minister for Environment, Energy and Rural Affairs in March 2020, including our recommendations for next steps.
- WG officials responded on the Ministers’ behalf on 21 April 2020 stating that detailed consideration would be given to the Water Standard in the coming weeks. We have received no further reply from WG.
- The Blue Flag Farming approach, developed by two Pembrokeshire farmers, was not backed by Welsh Government when they applied for funding through the RDP Sustainable Management Scheme to get the concept off the ground.

The industry has not done enough

- Industry organisations have committed significant time and resource to the Wales Land Management Forum Sub-Group on agricultural pollution since establishment in January 2017.
- In April 2018, this group submitted a progress report to the Minister identifying that there is no one simple solution to tackling agricultural pollution.

- The report included 45 recommendations in the key areas of advice and guidance, investment support, voluntary approaches, innovation underpinned by smart regulation.
- To date, the Minister has not responded to the progress report or met this expert group.
- NFU Cymru has also progressed initiatives to raise awareness of the importance of action to improve water quality to farmers across Wales including farmer meetings, attendance at shows across Wales, providing information on the NFU Cymru website and introducing a series of Water Quality Matters articles in the Farming Wales magazine.

NRW dairy visits

- Data collected from dairy visits is used to justify an all Wales NVZ approach, however, compliance/non-compliance is not the same as an assessment of risk that storage structures pose.
- WG/NRW have failed to examine reasons for non-compliance – e.g. what numbers of farms deemed non-compliant for slurry storage were under TB restriction at the time of the visit, what number are tenant farmers?
- The aim of the visits was to provide advice to farmers. Many farmers faced long delays in receiving the advisory reports from NRW, some did not received reports at all and due to changes in NRW staff some visits had to be repeated.
- Data on the visits was provided to Welsh Government before farmers received the information themselves.

Alternative options – earned autonomy

- The Regulations state Welsh Ministers will consider proposals put forward within 18 months for an alternative suite of measures that deliver the outcomes of the regulations more effectively.
- WG have failed to clarify how this will be possible when the measures contained in the regulations are specified in Annex 3 of the EU Nitrates Directive, offering no flexibility.
- WG have failed to define outcomes, the EU Nitrates Directive as implemented through the regulations are designed to address nitrate pollution from agriculture, but WG have assessed other pollutants (phosphates, GHG and ammonia) to justify the all Wales NVZ approach.

Regulations will be introduced sensitively and working with the industry

- The Regulations have been laid by negative procedure at the height of the COVID-19 pandemic, despite repeated statements from the Minister that she would not do this.
- The introduction of NVZ regulations does not align with the FM statement on 1st April 2020 which stated *“The Government has also considered its approach to subordinate legislation. There will be a need for priority subordinate legislation to respond to COVID-19. In addition, there will be a need for a significant volume of priority subordinate legislation to respond to European transition. And some legislation will be a legal necessity that would need to be made under any circumstances, or essential for another reason.*
- Legislation to facilitate an all Wales NVZ cannot be considered **essential** given that agricultural pollution incidents have been shown to be falling and regulation already exists in this sphere to address agricultural pollution.
- Despite statements to the contrary, WG has not worked with industry. Comments relating to deficiencies in the Impact Assessment have not been addressed, there has been no discussion re guidance or transitional periods despite commitments.
- Welsh Government have progressed proposals despite advice from their statutory adviser NRW and the opposition of fifty organisations from across farming and supply chain.

UK CCC Land Use: Policies for a Net Zero UK

- This report is used as justification for an all Wales NVZ approach. However, underpinning research (Vivid Economics & ADAS, 2020) states “*decisions to increase the coverage of NVZs could be informed by a Risk Assessment targeting where fertiliser inputs and organic manure production is highest, therefore avoiding an unnecessary burden on farmers*”.
- WG has not considered other approaches that would deliver the same or better outcomes for delivering GHG emissions reductions.
- Net Zero will not and cannot be achieved through regulation alone. NFU Cymru has ambitions for Net Zero agriculture by 2040 and is working to mobilise individual farm businesses across Wales to understand their respective positions and take action in the three key areas of improving productivity, enhancing carbon sequestration and renewables. A regulatory approach is likely to be counterproductive in winning hearts and minds.
- WG has not considered the impacts of off-shoring food production as a result of an all Wales NVZ in line with globally responsible principles under the Well Being of Future Generations Act.