

## Summary of NFU Cymru's response to Welsh Government's proposed regulatory measures to tackle agricultural pollution

### Introduction

Welsh Government has proposed new regulatory measures to tackle agricultural pollution. The new regulations are to come into force on 1<sup>st</sup> January 2020. Regulations are to include the following measures:

- Nutrient Management Planning
- Sustainable fertiliser applications linked to the requirements of the crop
- Protection of water from pollution related to when, where and how fertilisers are spread
- Manure storage standards

Details of the new regulations closely mirror the requirements for Nitrate Vulnerable Zones (NVZ) which together with additional measures will apply to the whole of Wales. The EU Nitrates Directive is known as a burdensome piece of legislation that is costly and complex for farmers to comply with. It is an approach that NFU Cymru categorically rejects.

Following discussions between NFU Cymru lawyers and Welsh Government, Welsh Government confirmed that the development of the regulations will be subject to consideration of the available evidence and the findings of a Regulatory Impact Assessment. This report presents a summary of the 102 pages of available evidence prepared by NFU Cymru and presented to the Minister for the Environment, Energy and Rural Affairs in September 2019. It includes:

- The current state and trends of water quality in Wales
- The political and policy context in which regulations are being introduced
- Progress to date – a sustainable management of natural resources (SMNR) approach
- Proposed regulatory measures to tackle agricultural pollution
- Economic context and affordability
- Social and cultural context

For further information you are referred to the [full document](#).

### State and trends of water quality in Wales

- Water Framework Directive (WFD) Monitoring

Analysis of comprehensive monitoring data undertaken by NRW for WFD shows an improving situation with respect to water quality in Wales over the short and long term. A high degree of variation in water quality across [Welsh catchments](#) also exists.

Based on WFD monitoring data new regulations that extend to the whole of Wales to tackle agricultural pollution cannot be justified.

- European waters

The European Environment Agency (EEA) undertook an assessment of the status and pressures of European waters in 2018. Evidence shows the percentage of waterbodies not in good ecological status or potential in Wales compares reasonably well to elsewhere, in the UK and EU even where NVZ regulatory approaches have been in existence for considerable time.

- Glastir Monitoring

Additional evidence relating to water quality is provided by the Glastir Monitoring and Evaluation Programme (GMEP). GMEP specifically assessed small streams and shows a general ongoing improvement in the condition of small streams since 1990. Monitoring through the programme also shows soil nitrogen levels are stable on improved land and levels of soil phosphorus on improved land were stable and presenting a lower risk to waters.

Across Wales, farmers surveyed reported a 9% reduction in applications of inorganic fertilisers with over half undertaking soil nutrient testing.

- NRW State of Natural Resources Report (SoNaRR)

NRW State of Natural Resources Report (SoNaRR) states that there is enormous variation in the extent and populations of freshwater species with some species increasing and some decreasing. The abundance of salmon has declined in recent years and is linked to increased mortality at sea.

- EU Urban Waste Water Directive

Welsh Government has not met its commitment under the EU Urban Waste Water Directive to undertake four yearly reporting to assess the extent to which waterbodies are sensitive to effects of sewage discharges. Sewage discharges are known to be a significant reason for failure of WFD.

- Bathing Water Quality

Evidence shows Wales has the best bathing water quality in the UK. Where classifications for bathing waters fall below standard, an evidence-based and targeted approach working with all sectors within the catchment has been shown to deliver the required improvements.

- Factors influencing water quality in Wales

Analysis undertaken by NRW shows there are a range of factors influencing water quality in Wales, including agriculture. A sole focus on agriculture through the introduction of regulatory measures to tackle agriculture pollution will not on its own deliver WFD objectives, nor does it represent an evidence-based approach given the extent and distribution of waterbodies failing due to agriculture. The single sector focus also puts major pressure on an industry to remedy issues out of their control due to natural processes.

- Agricultural pollution

Analysis of NRW pollution incident recording data shows pollution incidents arise from a number of sources and sectors, including agriculture. The total annual number of agricultural pollution incidents over the 18 year period to 2018 shows no discernible upward or downward trend; similar analysis of serious (high; formerly category 1 & 2) agricultural slurry pollution incidents to water over the same period also shows no discernible trend. The geographic distribution of agricultural incidents to water during the period 2010 to 2018 shows wide variation with many water bodies incurring zero incidents. Tackling water pollution using a single sector approach is, therefore, disproportionate for farming and also unlikely to deliver the reduction in pollution necessary to meet WFD objectives of good water quality given broader influences on water quality.

**Overall, analysis of the available evidence on the state and trends of water quality in Wales provides no justification to introduce regulatory measures to tackle agricultural pollution for the whole of Wales. A single sector approach will also not deliver water quality outcomes in line with WFD.**

### **Political and policy context**

- Environmental legislation

Environmental legislation has evolved significantly away from a single issue focus to a more balanced approach in recent years. This is reflected in the new legislative framework established through the Environment (Wales) Act 2016 which puts in place the legislation to plan and manage Wales' natural resources in a more proactive, joined-up way through the sustainable management of natural resources. The Well-Being of Future Generations (Wales) Act 2015 places a duty on all public bodies to protect and enhance the economic, environmental, social and cultural well-being of Wales.

- EU Nitrates Directive

Welsh Government proposals to introduce regulatory measures to tackle agricultural pollution closely mirror the EU Nitrates Directive NVZ action programme. This is an outdated approach to regulation. This approach does not align with the aspiration or ways of working established within Wales's legislative framework - economic, social and cultural well-being is not considered alongside the environment. New regulations have not been developed collaboratively, nor are they evidence based or adaptive.

- Welsh Government Water Strategy

The Welsh Government Water Strategy states it will adopt an integrated and collaborative approach that also reflects economic considerations and social issues. The Strategy also states it will work collaboratively with farmers to reduce the loss of nitrates from their land to prevent designation under the Nitrates Directive. Regulatory proposals do not align with Welsh Government's Strategy.

- Brexit

It is important to recognise that regulations are being introduced at time of profound uncertainty as a result of Brexit. All the forecasts and evidence points to an extremely bleak picture for many farming sectors in the event of 'no deal' Brexit which is now the 'assumed' position of the UK government. The ability of farmers to meet the costs of requirements of new regulatory measures must be considered in this context.

Given that at this time, there is no idea of what sort of trading relationships there will be with the EU27 in the future, securing future trade in agricultural produce cannot be used as justification for the introduction of burdensome regulatory measures on the farming sector.

- Welsh Government Consultation - Sustainable Farming and Our Land

Welsh Government is currently consulting through its consultation 'Sustainable Farming and Our Land' for how Welsh Government intends to support farmers after Brexit. Proposals include paying farmers annually to deliver outcomes not rewarded by the market such as nutrient management planning and the targeted application of fertiliser to deliver water quality outcomes. Payments will only be made above the regulatory baseline; this will also be the 'gateway' i.e. the threshold farmers must meet, if they are to access any future support. New regulatory measures, in effect, put into the sphere of regulation activity that Welsh Government currently proposes to pay farmers for delivering, severely limiting what farmers can realistically do and be rewarded for over and above this baseline.

New regulatory measures also disadvantage some farmers and groups of farmers such as the tenanted sector from accessing future support schemes at all given their highly complex and costly nature.

### **Progress to date – a sustainable management of natural resources (SMNR) approach**

- Wales Land Management Forum Sub-Group on Agricultural Pollution and Interim Report

Welsh Government's proposals to introduce new regulatory measures do not align with the findings of the [Wales Land Management Forum Sub-Group on Agricultural Pollution](#). The findings of this group are clear that there is no one simple solution to tackling agricultural pollution. Welsh Government proposals to introduce regulatory measures to tackle agricultural pollution that are, in effect, all Wales NVZ, go against the findings of the expert group established to consider agricultural pollution in Wales. The proposed regulations are not consistent with the principles of good regulation.

- Farmer led approach to Nutrient Management

In line with the Cabinet Secretary's statement of December 2017 which signalled a willingness to work with stakeholders to explore voluntary approaches to nutrient management, NFU Cymru and partners have devoted significant time and resource to take this forward. This project must be given adequate time to demonstrate its potential.

- Advice and guidance

Advice and guidance has very significant potential to drive improvements in water quality and reduce agricultural pollution. This is receiving significant focus with good signs emerging of farmers engaging on this issue and taking action as a result. This will take time to translate into reduced pollution incidences and improved overall water quality.

- Investment

Improving the range of investment opportunities has a key role in reducing incidences of agricultural pollution. The effectiveness of Welsh Government's RDP in supporting on-farm investment in infrastructure at a rate and scale appropriate to industry needs has been limited to date. Regulatory measures are being introduced at a time when future funding mechanisms are far from clear. Farm businesses experience difficulty in demonstrating the business case to secure borrowing for investments in infrastructure associated with environmental improvements.

- Innovation

Innovation and the application of new technologies and techniques have a key contribution to make in addressing a range of water quality issues on Welsh farms. The legislative framework provides the mechanisms to facilitate innovation through the deployment of experimental powers and powers to suspend regulation. Whilst examples of innovative approaches do exist, there is more that should be done to create the appropriate conditions for farmers and the private sector to have the confidence to make investments of time and money in innovation. Innovative approaches must be enabled; they must be given adequate time to be properly tested recognising that approaches that fail can make a valuable contribution to our understanding going forward.

### **Proposed regulatory measures to tackle agricultural pollution**

Concerns relating to the proposed regulatory measures focus in three key areas, namely the costs associated with designation; the bureaucratic nature of the regulation which presents

challenges to farmers to demonstrate compliance; together with restriction to day-to-day farming operations.

- NFU Cymru Survey (2016)

Results of the NFU Cymru survey undertaken in 2016 found that around one in eight farmers (13%) that are not currently in a NVZ said they would give up farming or would consider giving up if NVZ proposals were introduced. Nearly three quarters of farms that produce slurry (73%) said they did not currently have sufficient slurry storage on their farm to meet proposed NVZ requirements. It will cost those without sufficient slurry storage an estimated average of £79,957 to achieve NVZ slurry storage compliance (2016 figures).

- EU Nitrates Directive

The new regulatory measures mirror NVZ requirements. The EU Nitrates Directive and the methodology underpinning new designations has the very specific objective of protecting waters against pollution caused by nitrates from agricultural sources. Based on evidence gathered in 2016 through the Nitrates Review, NRW identified that the area of Wales designated as NVZ should increase from 2.4% to 8%. Independent analysis of the NRW evidence presented at that time suggests that even an increase to 8% is highly questionable.

The evidence provides no justification to introduce regulatory measures to tackle agricultural pollution at whole territory (all-Wales) level. It is not clear what objective Welsh Government is trying to meet in applying NVZ measures when the evidence of nitrate pollution from agricultural sources is absent from practically all of Wales. An all-Wales approach goes against the principles of science and evidence-based decision making as well as the 'polluter pays' principle.

- Effectiveness of the NVZ Action Programme

Analysis of the evidence provided in the Article 10 reporting of existing NVZ designations provides no substantive evidence of the effectiveness of the NVZ Action Programme in reducing agricultural pollution despite a number of long standing designations dating back to 2002. The Action Programme measures are extremely costly and complex for farmers to comply with. It is a highly unsatisfactory situation that farmers have complied with costly and bureaucratic measures over a prolonged period of time for little or no demonstrable environmental gain.

- Welsh Government consultation – Review of Designated Areas – Analysis of Responses

The responses to the Welsh Government consultation in 2016 'Review of Designated Areas and Action Programme to tackle Nitrate Pollution in Wales' provides insufficient justification for the introduction of regulatory measures for the whole of Wales. Responses from organisations representing many thousands of members have been weighted equally to that of individuals.

- Proposed regulatory measures – closed periods

Met Office data which shows average temperatures for Wales alongside grass measuring data shows conditions for continued grass growth and therefore, nutrient uptake into the winter months and during the closed period for spreading. Farmers should be empowered to make decisions to apply slurries and manures when weather and field conditions allow and not restricted by regulation which establishes a 'farming by calendar' approach. The

closed period approach undermines Wales's natural advantage of producing high quality protein from grass based production systems.

In the context of climate change projections and growing consensus that Wales will experience more extreme and challenging weather events in future, it is vital that farmers are allowed the flexibility to undertake field operations appropriate to the conditions.

- Fertiliser usage

Evidence shows from the British Survey of Fertiliser Practice that there has been a long-term decline in overall application rates of nitrogen, phosphates and potash since 1983. In particular, the survey identifies the long-term decline in total nitrogen over this period is mainly due to decreased use on grassland.

- Regulatory burden

Demonstrating compliance with NVZ rules through record keeping is widely acknowledged as burdensome. Where NVZ rules are applied elsewhere, there is evidence of non-intentional non-compliance and high levels of breach found at inspection. Many farmers resort to the expense of paying for professional help to assist with record keeping. The 2011 Working Smarter Review led by Gareth Williams, recommended that a risk based approach should underpin the application of environmental regulation in Wales.

- The tenanted sector

Tenant farmers may be unable to secure funding to make investments in infrastructure to meet regulatory compliance. Proposals put forward in the recent Welsh Government Consultation on agricultural tenancy reform are unlikely to address these issues in full even with the provision of transitional periods to allow farmers to adapt.

- Bovine TB

Bovine TB affects approximately 6% of farming businesses in Wales at any one time and causes significant stress on the farming families concerned as well as a range of other financial and practical impacts. The ability of farm businesses under TB herd breakdown to meet the requirements of proposed regulatory measures is likely to be extremely challenging, in many cases they will not be able to demonstrate compliance with the rules on slurry storage.

- Planning system

The extent to which the current planning system enables farmers to take forward construction of infrastructure to meet regulatory requirement is questionable. Anecdotal evidence suggests the planning system is likely to place severe limitations on the ability of farmers to achieve regulatory compliance.

- Biodiversity

Proposed regulatory measures to tackle agricultural pollution are likely to place an additional burden on suckler cow herds which have already declined significantly. This has impacts not only for farm businesses and employment in rural communities but unintended consequences for the environment and biodiversity as the benefits of cattle and mixed grazing regimes will be threatened.

**Economic context**

- Welsh farm incomes

All farm businesses in Wales will incur costs as a result of proposed new measures to tackle agricultural pollution whether this is a result of investment in new infrastructure, changes in farming practices which add cost or reduce income, or demonstrating regulatory compliance.

Costs will vary depending sector and scale and the ability of farm businesses to meet additional costs must be considered in the context of falling farm incomes in 2018-2019 and with almost a third of businesses failing to achieve profitability in any of the past three years. Welsh agriculture is a key source of direct and indirect employment in rural Wales. Many other rural businesses are dependent on farming for all or part of their income through the products and services farmers procure in the ongoing running of their businesses. An example of impact is the closed periods. Agricultural contractors, with no work available for staff during the closed periods, have stated they will be unable to afford to maintain staffing levels.

- Farmer confidence

NFU research shows that regulation and legislation is a key issue affecting farmer confidence. Over the nine year period to 2018, the survey shows that mid-term confidence (three years) is at its lowest ever. Brexit is also impacting on investment plans with more than twice as many farmers decreasing investment as increasing.

- Farm borrowing

Levels of farm borrowing have continued to rise to almost £19 billion in January 2019, an increase of 3%. This reflects the downturn in profitability during 2018 and NFU research shows that requests for overdraft or overdraft extensions have increased. Presenting a business case and demonstrating return on investment for what are fundamentally environmental improvements with marginal economic gains in the form of enhanced use of on-farm nutrients is likely to be highly challenging.

**Social and cultural context**

- Public awareness and perception

There is increasing evidence that a grossly misleading narrative has developed which presents agriculture as an increasingly damaging influence on water quality. The narrative is inaccurate and not reflected in water quality evidence. Increased and unchecked levels of activism in some areas of Wales now present a very real risk to the mental health and safety of farming families undertaking a perfectly legitimate and environmentally sound business activity. Where pollution has occurred, NRW already possess the powers to take enforcement action.

- Health, safety and well-being

Through the On-Farm Health & Safety Charter for Wales, Welsh Government is committed to working together for a safer farming industry in Wales. Impacts to mental health and on-farm safety are key concerns and should be considered in the development of new regulatory measures to tackle agricultural pollution.

- Welsh language

Evidence shows the prevalence of Welsh language speaking in farming and rural communities and the importance to the Welsh language of sustaining and promoting

agricultural interests. The Well-Being of Future Generations Act places a duty on all public bodies to work to enhance the well-being goals which includes 'A Wales of vibrant culture and a thriving Welsh language'.

The costs associated with the introduction of new regulatory measures to control agricultural pollution challenge farm viability and will result in farmers leaving the industry. Evidence shows that this is likely to represent a significant threat to the Welsh language, working against the Welsh Government's duty on all public bodies to enhance the well-being goals.

### **Conclusion**

Overall, analysis of the evidence shows that proposed regulatory measures to tackle agricultural pollution is not an evidence-based, proportionate approach. The extent to which proposed measures in the form of the NVZ action programme is effective in delivering water quality improvements is also highly questionable. Proposals work against Welsh Government's own policies and strategies and the ability of Welsh farms to meet and demonstrate regulatory compliance is a key concern. Affordability is a significant issue and in the context of the profound Brexit uncertainty, many farmers say they will be forced from the industry. The report also summarises the significant progress that has been made through the work of the WLMF sub-group on agricultural pollution. This expert group identify there is no one simple solution. The work they are driving forward must be given time and resources to demonstrate effectiveness.

### **We need your help!**

These proposals have the potential to impact on every farmer in Wales. It is vital that NFU Cymru's efforts are backed up by individual lobbying efforts from farmers in ALL parts of Wales. Therefore, we encourage you to correspond directly with the Minister for Energy, Environment and Rural Affairs, Lesley Griffiths AM and your local and regional AMs to set out the work you are doing on your farm to reduce agricultural pollution and enhance water quality and highlight the devastating impacts to your business of Welsh Government's costly and complex proposed regulatory approach.

### **Contacting your AMs**

Write, e-mail or telephone your elected representatives to make them aware of the strength of feeling on this issue and explain how it will impact on your business.

Please remember as well as your constituency AM, you are also represented by four regional list AMs. You can find out who your AMs are [here](#).

E-mail addresses for AMs take the format [firstname.secondname@assembly.wales](#). There are a few exceptions and these are listed below:

Rhun ap Iorwerth	<a href="mailto:Rhun.apiorwerth@assembly.wales">Rhun.apiorwerth@assembly.wales</a>
Dafydd Elis Thomas	<a href="mailto:Dafydd.Elis-Thomas@assembly.wales">Dafydd.Elis-Thomas@assembly.wales</a>
Andrew R T Davies	<a href="mailto:AndrewRT.Davies@assembly.wales">AndrewRT.Davies@assembly.wales</a>
Nick Ramsay	<a href="mailto:Nicholas.Ramsay@assembly.wales">Nicholas.Ramsay@assembly.wales</a>
Janet Finch-Saunders	<a href="mailto:Janet.Finch-Saunders@assembly.wales">Janet.Finch-Saunders@assembly.wales</a>
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David Rowlands	<a href="mailto:DavidJ.Rowlands@assembly.wales">DavidJ.Rowlands@assembly.wales</a>

The Minister's e-mail address is [Correspondence.Lesley.Griffiths@gov.wales](mailto:Correspondence.Lesley.Griffiths@gov.wales)

Postal Address – Assembly Member name, National Assembly for Wales, Cardiff Bay, Cardiff, CF99 1NA



## Headline statistics

- NRW identify the number of waterbodies achieving good or better overall status has increased to 359 in 2018 compared to 323 in 2015.
- NRW's State of Natural Resources Report published in 2016 states that water quality in rivers has generally improved over the last 25 years.
- The Glastir Monitoring and Evaluation Programme (GMEP) shows that 83% of headwater streams have good or high diversity, showing general ongoing improvement since 1990.
- The GMEP survey shows that soil nitrogen levels are stable on improved land and after recent declines in soil phosphorus, levels in improved land were stable and within the appropriate zone for sustainable production whilst presenting a lower risk to waters.
- In 2017 the water industry was responsible for the highest number of pollution incidents to water and there were 30,000 combined sewer overflows into rivers and seas.
- Wales has the best bathing water in the UK. In 2018 all 104 designated bathing waters in Wales met strict European classifications for bathing water with 78 classified as excellent.
- Analysis of WFD data shows that less than 15% of failures were attributable to agriculture in 2014.
- NRW pollution incident data shows there has been no upward or downward trend in the number of agricultural pollution incidents in the period 2001 to 2018.
- During the period 2001 to 2018, the average number of agricultural pollution incidents per year is 147. The average number of serious agricultural pollution incidents is 20.
- Through a targeted approach, Farming Connect has delivered advice and guidance in 28 waterbodies in Wales in 2018 with a further 35 in 2019.
- GMEP shows that over half of farmers carried out soil nutrient testing increasing to 61% of farmers who are participating in the Glastir scheme.
- In an NFU Cymru survey in 2016, around one in eight farmers not currently in NVZ said they would give up farming or consider giving up if NVZ proposals were introduced. Nearly three quarters (73%) of respondents indicated that they did not currently have sufficient slurry storage to meet proposed NVZ requirements.
- It will cost those without sufficient slurry storage an estimated average of £79,957 to achieve NVZ slurry storage compliance.
- Based on NRW monitoring, preliminary expert judgement identified a downward trend in nitrates at just two out of the 11 existing NVZ designations some dating back to 2002.
- Welsh Government's Farm Business Survey forecasts for farm incomes in Wales, 2018-2019 shows that average farm business income for all farm types is expected to decrease by 15% from the previous year.
- In rural areas agriculture is a significant source of employment employing up to 28% of workers at sub-local authority level.
- The NFU farmer confidence survey shows that mid-term confidence (3 year outlook) is at its lowest level ever. Levels of farm borrowing increased by 3% in the twelve months to January 2019 reaching £18.95 billion.