

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

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Ymateb gan: Cymdeithas Ffermwyr
Tenantiaid

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

Evidence from: Tenant Farmers
Association

1. Introduction

1.1 The Tenant Farmers Association in Wales (TFA Cymru) is the representative organisation for farmers who do not own the land they use for farming and is the only organisation dedicated to the tenanted sector of agriculture in Wales. TFA Cymru welcomes the opportunity of providing evidence to this Review of The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021.

2. The “All Wales” Approach

2.1 TFA Cymru has consistently opposed the introduction of the regulations on an “all Wales” basis. In the lead up to the introduction of the new regulations, it was clear that the majority of farmers were following the existing regulations and guidance and it was only in a small handful of cases where pollution incidents were occurring. On the one hand, these came either as a result of human error or unforeseen equipment failures or on the other, individuals who were deliberately flouting the existing rules and regulations. Taking an all-Wales approach to raising the bar on regulations to deal with these issues was therefore not appropriate. Instead, TFA Cymru has argued for the maintenance of discrete areas of specific concern, increased advice information and support and general tightening up of inspections and enforcement.

2.2 In addition, the extra costs involved with all farms in Wales having to comply with the new regulations will be crippling to many farm businesses which are already coming under considerable financial pressure. Many existing slurry storage facilities will need to be upgraded. There will also be specific difficulties for tenant farmers who are not able to obtain consent from their landlords to put in or amend existing fixed equipment – more details about this are provided below. If this all-Wales approach is to subsist, then substantial grant funding should be made available in a standalone scheme which is easily accessible regardless of whether individuals are owner occupiers or tenant farmers.

3. The Impact on Tenant Farmers

3.1 Prior to and following the introduction of the regulations, TFA Cymru has consistently raised concerns about the ability of tenant farmers in Wales to comply. Despite the assurances provided by Welsh Government that the specific concerns of the tenanted sector would be addressed, sadly, this has not occurred. TFA Cymru has posed the following four questions to Welsh Government and adequate answers are still awaited:

Q1 What happens in situations where the requirements for improvements in fixed equipment to meet the new statutory standards fall to landlords who refuse to either provide or upgrade the necessary fixed equipment? Farm tenants may have recourse to the Agricultural Land Tribunal if they occupy on Agricultural Holdings Act 1986 (AHA) tenancies or arbitration or the court if they occupy on Farm Business Tenancies (FBTs). However, these are lengthy and expensive procedures and where cost recovery is not guaranteed. What support will tenant farmers be given to enforce the terms of tenancies and what flexibility will be afforded to them while they await the determination of these cases?

Q2 What happens in situations where landlords have contracted out of their obligations to provide fixed equipment which meet statutory standards but are unwilling to grant consent to tenants to install or upgrade fixed equipment on their holdings due to restrictive clauses in their tenancy agreements? Whilst Welsh Government envisages introducing powers for farm tenants to object to landlords unreasonably refusing consent to take part in a Welsh Government financial assistance scheme, it is not seeking to cover situations where tenants need consent to comply with a Statutory or Regulatory requirement. Notwithstanding that, these provisions are not intended to become operational until after the Agriculture (Wales) Bill becomes law and will exclude FBTs.

Q3 What happens to tenants on short-term FBTs for whom the investment required to install or upgrade new fixed equipment would be disproportionate in comparison to the length of time they have available to them to make use of that new or upgraded fixed equipment? Whilst tenants may be granted consent to install fixed equipment as a tenant's improvement and therefore be entitled to compensation at the end of their tenancy, this would require an agreement to be reached with the landlord which is not always possible. Will Welsh Government seek to introduce a provision which will force landlords to agree that this investment should be treated as tenants' improvements or will Welsh Government instead fully grant aid the necessary fixed equipment required for these holdings?

Q4 What happens to tenant farmers whose tenancy agreements restrict them from the ability to export slurry and manure from their holdings?

3.2 Whilst the Welsh Government has produced its own draft question-and-answer brief for tenant farmers, TFA Cymru is concerned that this does not deal with the significant barriers that farm tenants will face in wanting to be compliant with the new rules.

3.3 In particular, we are extremely concerned that no exemptions are being provided for tenants who find themselves unable to comply with the new rules due to factors beyond their control. This will mean that tenants will be left having to operate in breach of their tenancy agreements, in breach of the regulations or give up farming. Even where tenancy agreements do provide clarity on the point of responsibility for fixed equipment necessary to meet statutory standards, it could take a considerable period of time for tenants to force landlords, through arbitration, to comply with the terms of the lease. Tenants would be unable to go ahead with any necessary upgrades to fixed equipment to meet regulatory standards as this would prejudice the outcome of the arbitration.

3.4 The main issue arising for those individuals whose landlords have exempted themselves from having to meet statutory standards for fixed equipment is that the same landlords often continue to require tenants to seek the consent of the landlord before adding to or amending existing fixed equipment on the holding. Such clauses can lead to a stalemate where the landlord simply refuses the tenant consent to carry out any necessary investment.

3.5 In its communications thus far, the Welsh Government has held up the need for landlords and tenants to discuss possible areas of concern and to attempt to reach a resolution. Whilst this is always the best approach, it will not always be possible, particularly where the landlord has an ulterior motive including seeking to recover possession of the holding or avoiding liability for compensation at the end of tenancy.

3.6 In an "all-Wales" approach, Welsh Government has a responsibility to ensure that tenant farmers are able to have recourse to adequate dispute resolution procedures to either require landlords to meet statutory standards or require their landlords to allow tenants to do so. Tenants who are doing all they reasonably can to comply with the regulations should not be deemed to be in breach of them, particularly if they are pursuing matters to arbitration. Arbitration is already a stressful, time-consuming and expensive endeavour without further pressure being placed upon a tenant from enforcement action under the terms of the regulations. Tenants must not be penalised under the regulations when they are pursuing their own legal remedies.

4. Alternative Approaches

4.1 TFA Cymru was surprised and disappointed that the Welsh Government decided not to follow the recommendations of its own Welsh Land Management Forum Pollution Subgroup. TFA Cymru was represented on this Subgroup by its Chairman, Dennis Matheson. The membership of the Subgroup included farming and environmental interest groups. It met on over 40 occasions prior to the introduction of the new regulations. Its central recommendation was to advise against the introduction of new, all-Wales regulations and to instead strengthen the pre-existing arrangements adding more draconian penalties for those individuals responsible for pollution incidents. The Subgroup also considered, in detail, the issues of compliance for the tenanted sector of agriculture including in its interim report issued in April 2017 and again, this has been inexplicably, totally ignored by Welsh Government.

4.2 Given the small number of declining pollution incidents in Wales, TFA Cymru believes that the recommendation of the Subgroup was the better approach to take. To date, Welsh Government has not produced an adequate response as to why the recommendation of this expert group was not followed. TFA Cymru also understands that the decision of the Minister was contrary to the advice received by the Minister from Natural Resources Wales (NRW) which also preferred the approach set out in the Subgroup report. In fact, NRW reported to the Subgroup in March of this year that it detected no noticeable difference in pollution incidents between those areas in Wales previously designated as NVZs as opposed to those which were not. This would seem to suggest that applying NVZ style rules to the whole of Wales will not have the desired result in reducing pollution incidents.

5. Conclusion

5.1 There were already extensive rules in place covering the prevention of agricultural pollution prior to the introduction of the 2021 regulations. New, all-Wales regulations were not required, better enforcement of the existing rules and regulations was what was needed together with the enhanced education and support alongside more draconian penalties outlined in the Welsh Land Management Forum Pollution Subgroup. The relatively small number of farmers and contractors (approximately 1%) causing reportable pollution incidents (excluding accidents) do so in spite of the rules. Raising the bar at an all-Wales level will not help but will add considerably to the costs of those who are not and will not pollute.

5.2 TFA Cymru would advise the Senedd Committee to press Welsh Government to reconsider the conclusions of the Welsh Land Management Forum Pollution Subgroup.

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