

Follow up to Climate Change, Environment and Infrastructure Committee Session

9 November 2023



Thank you for the opportunity to speak with the Committee as part of its Inquiry into Water Quality in Wales.

The following seeks to address some of those questions that were taken away as part of the discussion, and provide some additional insight into Natural Resources Wales' position.

If there are any further questions, please do not hesitate to contact us via government.business@cyfoethnaturiolcymru.gov.uk.

1. The impact of changes to the Control of Agricultural Pollutions Regulations

We noted the revision of Control of Agricultural Pollution Regulations (COAPR) laid in Nov 2023 which details the requirements of the Enhanced Nutrient Management Approach (ENMA).

The revision proposes no changes to the requirements of the ENMA as detailed in Welsh Government's consultation. The changes within the legislation are restricted to the process by which land managers notify NRW of their intention to use the option of the ENMA. The ENMA is time limited until 31 December 2024.

We do not see these changes as reducing protection of the environment. For those sites where a land manager has notified NRW of their intention to use the ENMA, compliance with its requirements will take place during as part of our programme of CoAPR inspections.

2. NRW's Enforcement Role

Strong regulation underpins our purpose to protect, maintain and enhance Wales' natural resources so that people can live better and healthier lives and our wildlife can thrive. We regulate a range of activities and apply a suite of enforcement responses for non-compliant or wholly illegal activities to protect our environment, prevent pollution and tackle the climate and nature emergencies.

Our [Enforcement and Sanctions Policy sets out how we undertake enforcement](#), to ensure that environmental offences are dealt with in a firm, fair and proportionate manner, in line with the Regulator's Code, with a focus on preventing and deterring further harm to the environment. Our [Offence Response Options](#) outline the range of enforcement tools available to us, including advice, warnings, enforcement notices, some civil sanctions, and prosecution.

These enforcement interventions aim to protect the environment by:

- Stopping the offence(es).
- Restoring or remediating the environmental consequences.
- Taking formal action when in the public interest
- acting as a deterrent to others from wilfully or negligently polluting or damaging the environment
- Preventing reoffending.
- Supporting compliance with the regulatory regimes and ensuring a level playing field for legitimate business.

The choice of enforcement tool depends on the severity and nature of the offence, as well as the willingness of the offender to comply with regulatory requirements. We adopt a risk-based approach to enforcement, taking action where there is evidence of an environmental offence and where there is public interest.

Some offences may be minor or unintentional. In these cases, we may see greater benefit in seeking to educate or use less formal approaches. This might include providing advice and guidance to prevent similar offences from occurring in the future, or by using voluntary arrangements to encourage companies and individuals to take steps to address the environmental harm caused by their actions.

However, some offences are serious or are undertaken by offenders who do not care about complying with legal obligations. NRW is wholly committed to using prosecution for the most serious of offences across those we regulate. We take companies or individuals to court where other enforcement tools have been ineffective or where the offence is particularly serious and in the public interest.

Our approach emphasises the importance of collaboration and partnership working between regulators, local communities and businesses to prevent environmental offences from occurring in the first place or ensure an environmentally protective response to any offence committed. This involves raising awareness of environmental issues and promoting good environmental practice, as well as working with businesses to help them comply with environmental laws and regulations. It is worth noting that our success in this area is less obvious and harder to measure. However, it is likely to result in lower levels of formal enforcement, such as prosecution.

Our [Annual Regulatory Reports](#) set out our regulatory performance and the effectiveness of our regulatory approach. The reports look at compliance, pollution incidents, crime and enforcement activity, and how we have delivered on our regulatory and enforcement duties each calendar year.

Since 2019 we have recorded over 3,600 new enforcement cases, comprising 3,350 offenders, with over 5,100 separate enforcement charges. The reason that there are more charges than cases is because an offender can often face multiple charges. Please see the figures in the table below:

Year	Total cases	Total charges	Total offenders
2019	640	938	632
2020	639	903	646
2021	1,010	1,350	968
2022	884	1,246	610
2023 (to 3 rd October)	497	673	495

The following table highlights our use of the full range of enforcement and sanctioning tools that are available to us, in combination if necessary, to achieve the best outcomes for the environment and for people:

Enforcement output	2020	2021	2022
Advice and Guidance	153	348	304
Warning Letters	324	479	449
Formal Caution	30	44	34
Prosecutions:	68	54	66
Court Fines	£25,097	£262,414	£510,156
Costs Awarded	£33,784	£131,027	£110,613
No further action	39	67	43
Enforcement notices	19	31	27
Fixed penalty notices	7	1	8
Civil sanctions	3	8	4
Permit revocation	-	2	2

It is important to highlight that there is an unavoidable time lag in our reporting. This is normally due to the nature of our investigative and enforcement work, given the time it can take to investigate an incident, identify potential offenders, obtain legal opinion, and update our systems on progress and enforcement outcomes. The number of enforcement outputs reported is likely to increase, as many cases remain ongoing across calendar years. We understand the ongoing questions around increasing prosecutions, but the key point is that prosecution in isolation does not lead to compliance or remedy of the root cause. Other regulatory and enforcement tools may result in a better outcome.

We continue to see pressures on our natural environment, and regulatory non-compliance, crime and pollution incidents inflict needless, yet significant damage. This, in turn, impacts communities and undermines legitimate businesses. Our

outputs can be limited by the powers held by us and regulatory and data limitations. NRW is pursuing opportunities to help improve the range, efficiency and outcomes from our criminal and civil enforcement interventions, to ensure those responsible for causing harm contribute to improving or reinstating our environment. At the moment NRW only has limited civil sanction powers and would be keen to work further with WG on opportunities to introduce additional civil sanctions for activities with environmental permits

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