

Interim Environmental Protection Assessor Wales

Water Quality Report: Call for Evidence

Purpose of the Report

The Interim Environmental Protection Assessor for Wales (IEPAW) has received several submissions about water pollution in Wales. As a result, and in accordance with her powers, she plans to produce a report on water pollution, addressed to Welsh Ministers, to:

- assess whether the existing legal framework is functioning correctly;
- identify areas where the existing legal protection may not be delivering the intended benefits;
- identify potential gaps in existing legislation;
- identify areas where the practical application of the legislation may be impeded; and
- produce draft recommendations for how the law could be improved.

The Interim Assessor is aware that the Welsh Government is putting in place arrangements for a statutory review of the effectiveness of the Water Resources (Control of Agricultural Pollution) Regulations (CoAPR), Wales 2021 and has announced their intention to appoint an independent chair to carry out that review. She is conscious of the risk of duplication and eagerly awaits the progression of this work.

Considering this, she has, at this stage, intentionally excluded agricultural pollution from this call for evidence. She is still considering how best to address that issue and a decision will be made on how to address it when it is clear how the Welsh Government review of CoAPR) is to progress. If submitters wish to submit evidence in relation to agricultural sources of pollution at this stage, they may do so in the final question of the survey providing the opportunity to raise any further points.

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In relation to other elements of water quality in Wales she is seeking evidence to identify:

- Current legal and regulatory barriers to the effective protection and improvement of water quality in Wales;
- Existing but underutilised legal or regulatory tools for the effective protection and improvement of water quality in Wales, and;
- Potential new legal or regulatory approaches which might be developed to improve the effective protection and improvement of water quality in Wales.

Water Quality Report: Background and regulatory context

Clean water is a necessity, not only to provide healthy ecosystems but also to support industry, recreation, and human well-being. Therefore, good water quality is vital for the environment, the economy as well as mental and physical health.

The devolution settlement in Wales is currently underpinned by a 'reserved powers' model¹ under which the Senedd can legislate on any matter providing it is not explicitly prevented from doing so by reference to s.108A and Schedule 7A of the Government of Wales Act 2006.² As such the Senedd has legislative competency over matters related to water. The Senedd also has the responsibility to legislate over water and sewerage undertakers providing they operate 'wholly or mainly' in Wales.³

The Welsh policy context

There is substantial Welsh policy relating to water quality. The 2015 Water Strategy for Wales outlines the Welsh Government's approach to water quality over the long term.⁴

¹ Wales Act 2017, s.3

² Government of Wales Act 2006 s.108A and Sch.7A

³ Water Industry Act 1991

⁴ Water Strategy for Wales 2015, pg 5

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Pursuant to the Well-being of Future Generations (Wales) Act (WBFGA) 2015, all public bodies listed under s. 6 of the Act must carry out sustainable development with the aim of achieving 'well-being goals'.⁵ As such, the priorities of the Welsh Government and Natural Resources Wales (NRW) are underpinned by the Well-being Goals set out in the WBFGA 2015.⁶ How each of the well-being goals is approached in the context of water is outlined in the 2015 Water Strategy for Wales.⁷

Wales has adopted the principle of the Sustainable Management of Natural Resources (SMNR) as its approach to natural resource management. The Welsh Government's approach to natural resource management, including water quality, is set out in the Natural Resources Policy (NRP).⁸

From the 7th of January 2019 Sustainable Drainage Systems (SuDS) were made compulsory on all new developments, subject to limited exceptions.⁹ SuDS differ from traditional drainage systems as they aim to replicate systems to drain surface water run-off.¹⁰ Following a Welsh Government consultation into SuDS a suite of statutory instruments was passed to accompany Schedule 3¹¹ of the Flood and Water Management Act.

In 2022 the Wales Better River Quality Taskforce was created as a partnership between the Welsh Government, NRW, Ofwat, Dŵr Cymru and Hafren Dyfrdwy. The Taskforce is primarily concerned with the management of Welsh storm overflows however its remit also

⁵ Well-being of Future Generations (Wales) Act 2015, s 3

⁶ Well-being of Future Generations (Wales) Act 2015, s 4

⁷ Water Strategy for Wales 2015, pgs 9 – 13

⁸ The most recent of which is the 2017 [Natural resources policy | GOV.WALES](#)

⁹ Flood and Water Management Act 2010, Sch.3

¹⁰ [SuDS Wales – Sustainable Drainage Systems](#)

¹¹ Approval and Adoption (The Sustainable Drainage (Approval and Adoption) (Wales) Order 2018) (external link); Procedural matters relating to approval and adoption (The Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018); Fees (The Sustainable Drainage (Application for Approval Fees) Wales Regulations 2018) (external link); Enforcement of the requirement for approval by the SuDS Approving Body (The Sustainable Drainage (Enforcement) (Wales) Order 2018); and Appeals against decisions of the SuDS approving body (The Sustainable Drainage (Appeals) (Wales) Regulations 2018

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extends to water quality issues.¹² In carrying out its functions the Taskforce has created a series of Action Plans to improve water quality in Wales.

Welsh Legal Framework

The Water Framework Directive Regulations

In Wales the primary legal benchmark against which all waterbodies are assessed is The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (WFDR).¹³ These regulations impose a statutory duty on Welsh Ministers to stop water quality degradation and get all waterbodies to 'good status' by 2027.¹⁴ NRW is responsible for the implementation of the WFDR in Wales.

Under the WFDR 'river basin management plans' (RBMPs) are required for all 'river basin districts' (RBDs). The RBMPs establish statutory environmental objectives for waterbodies within RBDs that must be met and set out the programme of measures must be taken to do so.¹⁵

There are 3 river basin districts, each with their own RBMP, wholly or partly within Wales:¹⁶
(i) The Western Wales RBD (ii) The Dee RBD (cross border with England) (ii) The Severn RBD (cross border with England)

RBMPs must be updated every six years; the most recent RBMP cycle covers the period between 2021 – 2027.¹⁷ Public consultations for the next cycle have recently been commenced by NRW¹⁸.

¹² <https://www.gov.wales/wales-better-river-quality-taskforce/terms-reference>

¹³ The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017, Schedule 1(2)

¹⁴ Ibid, Regulation 16(4)

¹⁵ The WFDR (2017) Regulations 12 and 13

¹⁶ Environment Agency 'River basin district map' (2015)

https://assets.publishing.service.gov.uk/media/5a7568ea40f0b6360e473e56/England_National_RBD_pdf.pdf

¹⁷ WFDR 2017, Regulation 12(6)

¹⁸ [Natural Resources Wales / Opportunity for people to shape the future of waters in Wales](#)

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Urban Waste Water Treatment Regulations

The Urban Waste Water Treatment (England and Wales) Regulations (UWWTR) 1994 regulate the collection, treatment and discharge of wastewater. Discharges from waste water treatment works (WWTWs) require a discharge authorisation under the Environmental Permitting Regulations (England and Wales) Regulations (EPR) 2016.¹⁹

The Bathing Water Directive

The Bathing Water Regulations (BWR) 2013²⁰ apply to beaches or inland waters in which many people are expected to bathe. Bathing waters designated under the Regulations are graded on a classification system which ranges between 'excellent', 'good', 'sufficient', or 'poor'.²¹

The Drinking Water Directive

Every waterbody abstracted from for human consumption must be identified in all RBDs, aside from those that provide less than 10m³ daily as an average or those serving less than 50 persons.²² Also, waterbodies that provide more than 100m³ a day as an average are subject to additional monitoring requirements.²³

In addition to attaining 'good' status all waterbodies identified as providing drinking water must also meet the drinking water standards set out in The Water Supply (Water Quality) Regulations 2018, which concern Welsh water companies, and The Private Water Supplies (Wales) Regulations 2017, which apply to water supplied by private sources.²⁴

The Water Industry Act 1991

¹⁹ Ibid, Regulation 6(2); That is unless the de minimis exemption for discharges from a sewage treatment plant as stated in Schedule 3, Part 2 s2(1) of the EPR 2016 applies

²⁰ The Bathing Water Regulations 2013 SI 2013/1675

²¹ BWD 2006/7/EC, Article 5(1)

²² WFD 2000/60/EC, Article 7 (1)

²³ WFD 2000/60/EC, Article 7 (1)

²⁴ The Water Supply (Water Quality) Regulations 2018 S.I. 2018/647; The Private Water Supplies (Wales) Regulations 2017 S.I. 2017/1041

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The Water Industry Act (WIA) 1991 is the primary legislation governing water and sewerage companies wholly or entirely in Wales. The WIA mainly places duties on water and sewerage companies and local authorities regarding water supply and wastewater matters, however duties in relation to water quality are also included.²⁵

Section 68 of the WIA states that drinking water must be wholesome when supplied.²⁶ The criteria for drinking water, to qualify as whole is set out in Regulation 4 of The Water Supply (Water Quality) Regulations 2018 S.I. 2018/647.

The Environmental Permitting Regulations 2016

The primary water pollution offences in Wales are set out in the Environmental Permitting (England and Wales) Regulations (EPR) 2016 (as amended).²⁷ Under the EPR a person must not cause or knowingly permit a 'water discharge activity' or 'groundwater activity', except under and to the extent authorised by an environmental permit or unless the activity is listed as an exempt activity.²⁸ Contravention of Regulation 12 is an offence.²⁹

The Water Resources (Control of Pollution) (Oil Storage) (Wales) Regulations 2016

The Water Resources (Control of Pollution) (Oil Storage) (Wales) Regulations 2016 apply to any kind of oil, including petrol, diesel, kerosene, lubricating oil (both mineral and synthetic), waste oil, vegetable and plant oil³⁰ in containers with a capacity of 200 litres or more.³¹ A person who is in custody or control of oil must ensure that it is stored in a container which is

²⁵ Part 3 of the WIA 1991 sets out the duties of the water companies with respect to water supply; Part 4 of the WIA 1991 sets out the duties of water companies regarding sewerage

²⁶ WIA 1991 s 68 (1)

²⁷ EPR 2016 S.I. 2016/1154, Regulations 38(1) and 12(1)

²⁸ EPR 2016 Regulation 12(1)

²⁹ Environmental Permitting Regulations 2016, Regulation 38(1)

³⁰ Welsh government 'Keeping your oil storage safe Guidance on the Water Resources (Control of Pollution) (Oil Storage) (Wales) Regulations 2016' (2016)

³¹ The Water Resources (Control of Pollution) (Oil Storage) (Wales) Regulations 2016 S.I. 2016/359, Regulation 3

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of sufficient strength, installed correctly and situated within a secondary containment system.³²

Failure to comply with any requirement in regulations 4 to 8 is a criminal offence, for which a person is liable on summary conviction or on conviction on indictment, to a fine.³³

Regulation 10 provides that NRW, as the environmental regulator, may impose civil sanctions in relation to that offence.

Current State of Water Quality in Wales

In the 3rd classification cycle under the Water Framework Directive Regulations 2017 (WFDR), NRW stated that only 40% of waterbodies throughout geographic Wales were at good or better status.³⁴ NRW also compiles data on the reasons waterbodies fail to achieve good status - the data compiled for the 3rd classification cycle shows that agriculture and rural land use was the reason for not achieving good status in most waterbodies, followed by the water industry, mining and quarrying and urban and transport.³⁵

NRW also records substantiated pollution incidents on its Wales Incident Recorded System (WIRS) which it then presents on the Wales Environmental Pollution Incidents portal. Data collected from this portal at the longest date range available (01/03/2016 – 03/04/2022) shows 4857 substantiated incidents impacting surface water in Wales between these dates.³⁶

³² The Water Resources (Control of Pollution) (Oil Storage) (Wales) Regulations 2016, Regulation 4

³³ The Water Resources (Control of Pollution) (Oil Storage) (Wales) Regulations 2016, Regulation 9

³⁴ [Natural Resources Wales / River basin management plans 2015-2021](#)

³⁵ [Natural Resources Wales - Citrix FileShare \(sharefile.eu\)](#)

³⁶ NRW Wales Environmental Information Portal [Wales Environmental Pollution Incidents | Wales Environmental Information Portal \(arcgis.com\)](#)

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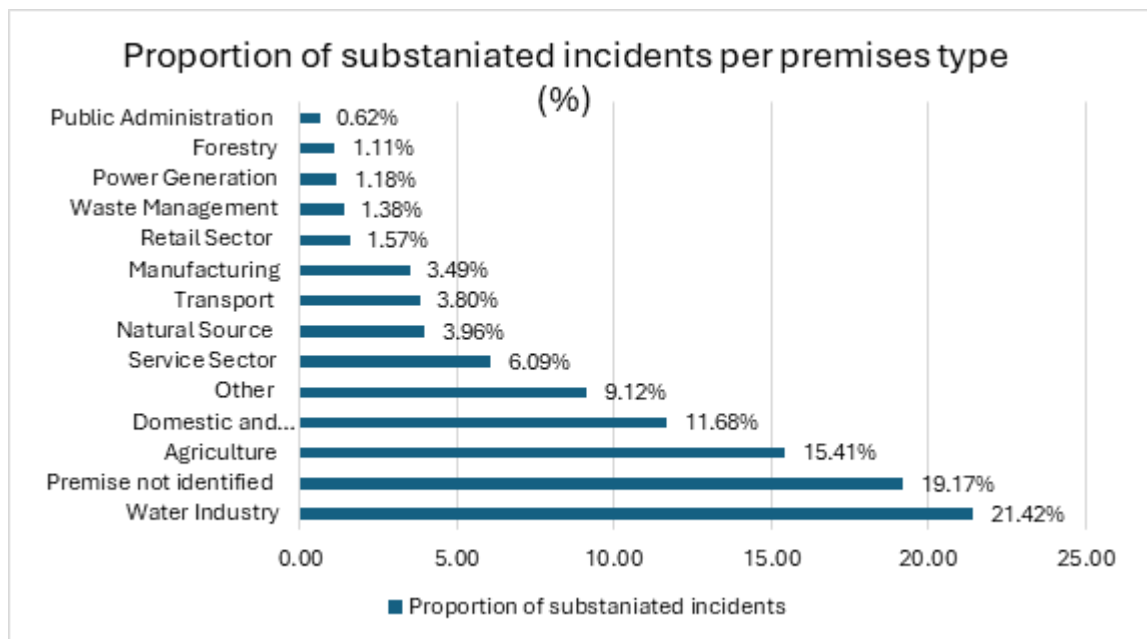


Figure 2 –Proportion of substantiated water pollution incidents by premises type.

This data suggests that the water industry is the highest contributor to the substantiated pollution incidents reported to NRW. It is important to note that where it is not possible to identify the pollution source reports would not appear on WIRS.³⁷ However, where NRW can confirm the occurrence of a pollution incidence but are unable to identify its source, the incident is classed as “Premises not identified.”

It should also be noted that self-reporting requirements, which include incidents that have the potential to pollute but may not result in environmental impact, gives rise to a potential inflation of reported incidents by the water industry.³⁸

³⁷ NRW technical clarification for the Senedd Economy, Trade and Rural Affairs Committee ‘Review of Control of Agricultural Pollution (Wales) Regulations 2021 (CoAPR)’ [APR 32 Natural Resources Wales.pdf \(senedd.wales\)](#)

³⁸ NRW technical clarification for the Senedd Economy, Trade and Rural Affairs Committee ‘Review of Control of Agricultural Pollution (Wales) Regulations 2021 (CoAPR)’ [APR 32 Natural Resources Wales.pdf \(senedd.wales\)](#)

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Submitting Evidence to the Call for Evidence

Evidence should be submitted via the following questionnaire.

There is also an option for submitters to upload an additional document in support of their submission. This should be limited to a single file of 10mb. Ideally, it should be in pdf format however word, excel or images may also be submitted.

Use of Evidence and Data Protection

All evidence is retained in line with the IEPAW's data protection policy and is only used for the purposes of the Water Quality Report. It is assumed that submitters are willing to have their organisation associated with any written comments in the final report. No further contact information will be provided. Material submitted in evidence will only be used for other purposes or shared with third parties with the permission of the submitter.

Please note that information submitted to the IEPAW may be subject to release to the public or other parties in accordance with the access to information law (Environmental Information Regulations 2004 (EIR, Freedom of Information Act 2000 (FOIA) and the Data Protection Act 2018 (DPA)). Welsh Government is presently the data controller for the IEPAW.

IEPAW

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Closing Date of the Call for Evidence

The final date for submissions is Monday 5th August 2024.

If you require any further information regarding the call for evidence or have any questions about your submission, please contact us by email at **IEPAW.gov.wales**