

Response from	Tell us what you think about the revised Enforcement and Prosecution Policy
Individuals	<ul style="list-style-type: none"> • The revised policy is not robust enough and strict enforcement is required. The advice and guidance policy has been in place for quite some time, yet environmental crime is increasing and there is no deterrent, with a high number of repeat offenders. Also, no consideration is given to the scale of the crime committed. Contamination of fresh water by businesses or individuals needs to be a priority.. Strict enforcement is required particularly with regards to water companies and industry/agriculture who are continually breaching regulations on a massive scale. This cannot be allowed to continue. • I think it's positive that you are revising it as the issues we face environmentally are pernicious especially the impact they have on those of us who care deeply about the environment and natural wildlife habitats at gross odds with those people who insist to damage the environment by their thoughtless and irresponsible attitudes and actions that pervade our wonderful biodiverse natural world. • Individuals show no regard for the environment discarding their litter or caring where it ends up or what it damages along the way.It should definitely be made anti-social and criminal to harm the environment and wildlife by any actions including hunting, baiting, trapping, snaring. • Local authorities could do better when they litter pick as they are not thorough or when collecting refuse and regularly leave debris. Postal services drop elastic bands on roads and there are masks strewn after carers visit properties.People need to understand that the consideration they expect to be shown should also be demonstrated by them and that the environment has rights not to be damaged and destroyed by people's lifestyles and should not be tolerated. • Looks like a fair assessment of the issues and allows proportionate action to be taken. However, the existing proportionate level is set to low. • This Policy, and its delivery, need to address NRW's failures as a regulator. It does not meet: the aims of the Hampton Review, the Macrory penalty principles and characteristics of a successful regulatory regime. • It fails to recognise the impact of widespread compliance failure on local communities, as indicated by the Code for Crown Prosecutors: • These comments are made about NRW's enforcement in relation mainly to water pollution, especially by agriculture. • All Habitats Directive freshwater features are in 'unfavourable' status, with the exception of the otter. • Continued widespread agricultural diffuse pollution resulting in elevated nutrient and sediment loadings into freshwaters. Effective Enforcement and Prosecution is a key tool to stop this decline and, since its creation, NRW has been failing to use it effectively. Similar issues arise in other areas of NRW's responsibilities, e.g. rod licence enforcement and small-scale hydropower. • Lack of focus on and reporting of outcomes: your policies should be driven by outcomes, namely compliance with laws, including regulations. There is no systematic reporting of compliance to drive your strategy and policy with an annual review as part of a management cycle. • It does not show what NRW is achieving by way of compliance. • Too little focus on the wider scale of the problem: In determining what is 'proportionate' action NRW considers only the impact of the individual offence that has been detected. Where there is widespread failure to comply and the impact on the 'community', as with agricultural regulations, enforcement action needs to be sufficient to provide deterrence not only to the offender detected but to others. The need for wider deterrence is apparent from the Code for Crown Prosecutors

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	<ul style="list-style-type: none"> • Lack of deterrence: NRW regulates many individuals and businesses and has limited resources. At present, those regulated have little reason to comply, unless NRW staff should visit, find lack of compliance and then only if NRW tells them what to do with a strong sanction to back it up. The arithmetic is against you. For example, there are 26,000 farms in Wales of which NRW visits a few hundred once, each year, and only a few score more than once. Furthermore, most visits are arranged in advance so intentional or negligent non-compliance can be hidden. With such infrequent contact, the chances of detection are therefore minimal, and a farmer can pay little heed paid to regulations should it suit him or her. More robust penalties, both financial and reputational, should be applied much sooner. • Lack of publicity of offences to other potential offenders, the local community and other regulators: Publicity should be used to convert enforcement action into wider deterrence and hence compliance. This is one of your potentially most powerful tools. • It is an accepted principle that justice must not only be done but seen to be done. That is not happening. As far as possible, offending businesses and individuals should be identified on a public register saying what offences they have committed, by whom and action taken. This publicity would also show those who do comply, that NRW is not giving an unfair business advantage to those who don't. • Stronger action sooner and that can be cited in court: A warning letter and advice may be appropriate for a first offence, provided there is neither intent nor negligence. However, repeat offences or failure to heed advice needs formal action that can be cited in court should a prosecution for further subsequent offences be necessary. NRW should make greater use of Formal Cautions..NRW has a unique position as a regulatory body. • Regulations are inadequate and resources limited but NRW has not been using enforcement effectively, leaving Wales with degraded and declining rivers. Sustainable Management of Natural Resources it is not.
Fisheries, Anglers, Angling clubs, and Rivers trusts	<ul style="list-style-type: none"> • We have seen so much environmental damage to our rivers, and we do not see many if any prosecutions. Any fines issued are really small considering the long-term damage that's being done. At present I and many others have no faith in NRW nor Dwr Cymru. Things have to change soon as long-term damage is already being done. It's not only having significant impact on the rivers but the whole ecosystem. Soil being degraded or destroyed; farmers will go out of business eventually if nothing changes. I hope that the minister for climate change and the minister for the environment will make a difference. • From our perspective you simply have no feet on the ground, time and time again we find and report illegal activity only to find your enforcement is 100 miles away watching a bloody rubbish tip while there gangs are netting irreplaceable critically endangered salmon and sewin. It tells us of your wanton disregard for these valuable fish and the genetics they carry to each Welsh river, disregard for their economic value to Wales and disrespect to anglers giving up their time to do your bloody work, unpaid and unprotected from poachers who are routinely carrying knives. Get off your arse and do the job you are paid for!! • We reported a fly tipping incident on the banks of a river, we were advised that NRW do not deal with fly tipping issues and we should report it to the local council. After some discussion the NRW officer agreed to report it to the council. Unfortunately, the rubbish was still in place last week. Whatever system you have in place it is clearly not working at present. • With regards to pollution, there have been a number of instances over the last couple of years where Compliance Assessment Reports have been issued to DCWW following significant sewage discharges from a CSO. Each report requests improvements but increased sanctions are not evident. There is no deterrent, no formal caution, no Non-Compliance Penalty Notice etc. for repeated offences. In fact, there does not appear to be any Enforcement taking place whatsoever. • I believe the combined aims of education and enforcement in the policy to be admirable. My main concern is regarding the implementation of the policy. Is NRW going to rely on members of the public reporting incidents or are NRW officials going to have greater presence? As someone who has fished since the 1950's I can remember regularly meeting water bailiffs on the rivers. In the past 10 years I have not

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	<p>seen a single bailiff on the river. The only time I have met a bailiff in recent years is when they have come to a reservoir or still water fishery to carry out a mass check on rod licences.</p> <ul style="list-style-type: none"> • The Policy builds on previous policies but lacks clarity in a number of areas. In particular there is no reference to timescales or standards of service in dealing with investigations and subsequent enforcement action which frequently takes too long. There is also a need to promote the policy amongst various groups including farmers, magistrates and others who often do not understand the environmental and financial impact of breaches and the enforcement options potentially available. • In particular the Trust would like to see much more frequent and widespread use of enforcement undertakings. These are well known to larger businesses like Welsh Water but not well known by smaller operators and farmers when they would often be a much better outcome than, for example, formal cautions or prosecutions. NRW should publicise and promote their use and not leave it to individuals or companies to take forward. • The internal NRW processes should be streamlined wherever possible to speed up enforcement action to improve NRW's reputation with both the public and offenders. • As always, you write a good job, but then fail to comply with your own procedures'. You refer to intelligence lead enforcement, which in the case of protecting endangered species such as salmon is a farce. We, anglers, were advised at our least LFAG meeting, that nets, seen left in rivers as part of poaching activity, are to be removed and, presumably, destroyed. The rationale being that the loss of a net costing around £80.00, your figure not mine, will be as damaging to poachers as the fine they may be expected to receive. Therefore, the cost of prosecution is not warranted. • So much for protecting endangered species! No salmon stocks in Welsh rivers. • The water quality of our rivers is currently failing to meet water framework directive standards • This policy is clearly cost lead rather than performance lead. In my opinion you are failing miserably in your duty to protect our environment and the species that depend upon your protection. Your senior management must stop submitting to the constant cost cutting imposed upon them by the Government and start making loud noises to demand sufficient funding to carry out your obligations. There is nothing more important to the human race than water: you are allowing it to be polluted. • We support the updating of the Enforcement and Sanctions Policy. • We would like to see Timeliness added to the principles for enforcement. It is important that enforcement proceedings are carried out as speedily as possible and we would recommend that targets are set for carrying out the necessary processes e.g. a target time for the production of case files. Performance in relation to these targets should be publicly reported. • Section 2.6 Having regard to wider responsibilities is not particularly clear. How exactly will these wider responsibilities affect enforcement decisions? • Section 5, advice and guidance is identified as an enforcement action. We would question whether this is correct? The definition of enforcement is the act of compelling observance of or compliance with a law, rule, or obligation. Providing advice or guidance may assist in bringing an offender back into compliance but it doesn't compel them. Furthermore, it is not clear when advice and guidance needs to cease, and true enforcement action starts.

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	<ul style="list-style-type: none"> • We support the three areas to Outcome-focussed enforcement. In the case of serious and repeat pollutions, we would like to see more prosecutions as previous approaches have failed to prevent or reduce the level of these offences. Where appropriate, we support the use of Enforcement Undertakings (EUs) where funds would enable direct environmental improvement and repair of damage caused by the pollution incident. • Whilst we support NRW's decision to link EUs to Area Statement priorities, we would remind NRW that the purpose of an EU is to provide repair or compensation to the damaged habitat or impact from the incident. Therefore, we strongly believe that EUs should ensure direct connection to the pollution incident and its impact, and then priorities under Area Statement, but not the other way round. • There is no reference to local prevalence of offence as a public interest factor in favour of prosecution. The Code for Crown Prosecutors deals with this issue under community impact. NRW are bound by this Code and the NRW Enforcement and Sanctions policy should incorporate the prevalence of offending and its impact on the community in determining the severity of an offence. • We would like to point out that this policy can only be delivered if NRW has sufficient resources in terms of money and appropriately skilled staff as well as the right culture. Based on recent performance this does not appear to be the case. • We have compared the Draft Enforcement and Sanctions Policy to the current iteration published in 2013. We note one or two minor changes but conclude that most of what is contained within the new draft simply reflects changes in the law since 2013, particularly with respect to the Regulators' Code and the statutory growth duty, both of which are beyond the control of NRW and also in relation to civil penalties introduced following the Macrory review. • We believe that whatever sanction is applied in whatever set of circumstances, NRW needs to consider very strongly the overall message its choice of sanctioning sends to all participants in the sector. For example, a failure to prosecute a farmer for a repeat offence, or for failure to observe rules that have been the subject of codes of practice and guidance for decades, sends a very strong message to the farming sector as a whole that they need not worry about punitive sanctions from NRW. • There are some encouraging aspects to the proposed policy, but there are some worrying signs that the Regulators' Code and the statutory growth duty, together with the uptake of civil penalties, will, over time, reduce the deterrent effect of NRW enforcement activity. We are firmly of the opinion that whatever choice NRW makes it must maintain and, arguably, increase the deterrent effect, whether it be for polluting farmers, failing sewage treatment works or any other activity affecting the environment. • In south west Wales, and no doubt elsewhere in Wales, repeated pollutions of streams occur, often by different farms within the same catchment. Some of these incidents will be minor but the cumulative effect can be harmful to the aquatic environment. Not to have a policy allowing for the prosecution of relatively minor events, where the cumulative effect could be substantial or where a culture can develop within a catchment that a small amount of pollution can be tolerated is an unnecessary and unwelcome limitation of the regulator's powers. Having such a policy would be particularly useful in respect of poor soil management leading to run off. • I appreciate that as a general principle not all breaches of regulations require prosecution but the option of using the full range of regulatory powers must be preserved. • Timeliness of prosecutions. Procedures should be in place to ensure that once an investigation is complete, the decision of what regulatory or enforcement option to use is made without unnecessary delay. • NRW definition of regulation and enforcement Under Chapter 5 of the draft policy there is included the following under a list of enforcement options: The enforcement options we have available include: providing advice and guidance Providing advice and guidance is important but,

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	<p>with respect, providing it is not an enforcement action. To list providing advice and guidance as such would lead to a misleading tally of enforcement action taken. This should be removed from the list of enforcement actions.</p>
<p>Farmers' Union of Wales</p>	<p>The FUW recognises that the revised policy provides regulators with a broad toolkit to deal with the full range of non-compliance, although, as commented before in previous consultations, the process appears to be overly complicated and difficult for the farming industry to understand.</p> <p>It is not clear from the documents which changes have been introduced as a consequence of the review and that a different format would have facilitated comment on the review. As a consequence the task was unnecessarily heavy going and changes introduced in the review may possibly have escaped notice.</p> <p>In addition, there is no attempt to quantify the number of cases dealt with by each of the categories of the available sanctions listed in the annexes. If members were aware of the numbers or percentage of cases falling into each of the enforcement options, then perhaps they would be in a better position to gauge the claims made, that the enforcement powers and sanctions were proportionately and fairly delivered.</p> <p>Notwithstanding the above the FUW wish to note the following points.</p> <p>Agricultural holdings in Wales are largely made up of small family businesses which are highly dependent on family labour. The industry already has to comply with a wide range of regulatory requirements and there are further, potentially large regulatory increases on the horizon.</p> <p>The overwhelming majority of farmers already comply with existing regulations and given their concern about understanding the complexity of the standards that are required and the potential financial impacts on the business if an offence is committed, many already exceed the expected requirements.</p> <p>Whilst the FUW support proportionate environmental regulation, members were concerned that the industry was becoming disadvantaged compared to other less regulated countries across the globe, as the UK secures new trade deals.</p> <p>In addition, the FUW has serious concerns if Natural Resources Wales has the resource capacity to deliver, without fear or favour, the existing regulatory framework and that the additional workload from the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021, across all agricultural holdings in Wales will lead to over regulation, worry and costly errors for members' livelihoods.</p> <p>In addition, members found issues with accessing help and guidance from the NRW website and further challenges when using the designated helpline. These were thought to contribute to accidental transgressions by farmers who are not conversant with the plethora of environmental regulations.</p> <p>Members questioned whether the regulator truly understood and empathised with the pressures faced by family farms in these extraordinary times of proposed BPS support payment changes, Brexit trade and labour challenges and more recently exorbitant increases in energy costs for small businesses such as dairy farms.</p> <p>During a previous NRW consultation on Proposals to tackle crime and poor performance in the waste sector, consideration was given to the resources at the disposal of the business when dealing with transgressions. The FUW replied that corporate bodies have more resources at their disposal than small private companies: this approach should be considered within the revised Enforcement and Prosecution Policy when dealing with farmers who have fallen foul of regulation breaches.</p> <p>The FUW believes that the success of the NRW review of the enforcement and prosecution policy will only be witnessed if the level of infringements are reduced rather than the number of prosecutions it succeeds in delivering. As such, the provision of an annual statistical</p>

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	<p>summary by enforcement option (see above), to demonstrate trends, is fundamental in delivering a positive outcome.</p> <p>It is worth noting that knowledge transfer and support is an approach that works with farmers ,as witnessed by falling numbers of agricultural pollution incidents, since the Wales Land Management Forum was established and bodies such as Farming Connect have delivered on farm advice and guidance, before any non-compliance occurs.</p> <p>As pointed out in previous responses, farmers have to comply with a range of regulations and penalties for any transgressions should be proportionate and only imposed once, either as a civil sanction or a penalty imposed by Welsh or UK governments.</p>
<p>Woodland, Wildlife Trusts, RSPB Cymru and Nature</p>	<ul style="list-style-type: none"> • We welcome the opportunity to comment on NRW’s Draft Enforcement and Prosecution Policy and hope that the points below will be helpful in developing and implementing this policy. • We are very concerned by the fact that NRW prosecutions for environmental offences fell by 61% from 2014-2020, no doubt linked to the fact that NRW’s budget decreased in real terms by 35% from 2013-2020. This revised policy must be supported by sufficient resources for NRW to fulfil its statutory duties to a good standard to secure appropriate management and provide effective protection for the natural environment, including through enforcement and prosecution where necessary. • We consider it essential that a strong evidence base and effective monitoring programmes are in place to underpin management and enforcement. We are extremely concerned that at present this is not the case, with (for example) no national programme of protected site monitoring in place resulting in poor data and evidence about protected sites. Lack of monitoring and evidence will severely hamper NRW’s ability to carry out its enforcement function and so we consider this a priority for urgent attention and action. • We have particular concerns around monitoring and enforcement in relation to agricultural pollution. We wish to see NRW develop a strong evidence base and monitoring programme for nitrates, phosphates and soil pollution; undertake assessments of farm compliance; effectively enforce the Slurry, Silage and Agricultural Fuel Oil (SSAFO) Regulations and new Control of Agricultural Pollution Regulations; and review and update prosecution guidance in relation to environmental incidents. We believe Ministers should commission an independent audit of NRW’s capacity and ability to monitor, manage and enforce for agricultural pollution. At present, due to lack of capacity and monitoring, specific pollution events are often undetectable, and polluters are not held accountable. • The draft Policy makes no reference to the role of the police in enforcement, which is a surprising omission since a parallel NRW consultation on NRW’s wild bird review states “In Wales responsibility for enforcement of protected species legislation lies with police forces across Wales, including in relation to compliance with the terms and conditions of any section 16 licences. NRW’s role is to support and advise the police in any enforcement proceedings.” This is an area that leads to confusion and uncertainty among the public when reporting wildlife crime, and we feel that the overall policy and any subsequent communications should be clear about this since the distinction is not made in the draft version.
<p>Voluntary Sector, Charities and Community Groups</p>	<ul style="list-style-type: none"> • This document is not very clear to the lay man. What we need is clear monetary warnings for people about what the minimum amount they could be liable for prosecution if they were to be caught and taken to court. The document is very confusing and very legal and would not really be a deterrent for any fly tippers. • My experience of living in an area that is blighted with fly tipping is that trying to get any prosecution is hard and when you do get a prosecution the fine is not worth the effort and merely pocket money for the offender. We should be coming down hard on these offenders and there should be clear responsibility for who is doing what as to get NRW to do any prosecutions is difficult • The policy is detailed and covers all aspects, but it does not relate to the day to day working of NRW as officers will not follow the processes detailed. Experience has shown that vast amounts of effort go into not taking action where appropriate. This policy has the potential to address the situation with waste and pollution but only if it used. For this to be adopted you would need officers on the ground who will follow it.

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	<ul style="list-style-type: none"> • Keeping up and dealing with those who fly tip, for example, is necessary but of more long-term value is the education that will lead to a social change where litter becomes socially and habitually unacceptable . Unfortunately, those who litter are the ones who will be least responsive to re-education. • I think this is a fantastic idea and would love to be a part of this, I try my best to report the individual and companies who are the cause of this and would love a contact where we are able to do this directly
Ltd Companies	<ul style="list-style-type: none"> • It has the potential to focus your minds on the protection of the environment and the protection of individuals and the public of non-compliance by offenders. It tries to bring you in line with other prosecuting authorities such as the crown prosecution service. However, there is a serious lack of regard for the effects of breaches of environmental laws and regulations on victims. It does clearly set out the powers available to you but if you fail to use them then it is pointless. You don't have a victim's charter. There is no guidance on what happens if you breach your statutory obligations . However, if it is as badly applied as your previous policy then it is simply a matter of paying pointless lip service. To be honest I can see anything different than was in your 2013 policy other than a right for a victim to seek a review of your decision. There is nothing in your policy to deal with complaints about your failures to implement your policies or breaches of your statutory duties and what your statutory duties are. • Sounds good, but policy is only as good as its manifestation. I would like to see more resources made available on the back of this policy for monitoring and enforcement. I am aware of serious threats to the aquatic environment being allowed to continue and repeat incidences without any investigation or enforcement. • Your policy does not incorporate your obligation to comply with The Police and Criminal Evidence Act and code of practice that govern your duties as statutory investigators. You currently do not comply with this legislation. Your proposed policy plays lip service to victims' rights. You are obliged as a statutory investigating and prosecuting authority to comply with the victim's code (code of practice for victims of crime in England and Wales) you have thus far not complied with this. No reference is made to your obligations to protect people's rights under the Human Rights Act. No details are published about what your governing body is *i.e. relevant ombudsman, • We welcome the opportunity to review your draft Enforcement and Prosecution Policy. We have reviewed the policy and our only comment would be in relation to paragraph 7.1.6 Deterrent Effect. This section states that 'Prosecutions, because of their greater stigma if a conviction is secured, may be appropriate even for minor non-compliances where they might contribute to a greater level of overall deterrence.' • We feel that prosecution for minor non-compliances is not proportionate and would not be aligned with the public interest test as set out in The Code for Crown Prosecutors or The Regulators Code . There are other more appropriate ways to address minor offences, even when there is a history of reoffending, such as stop notices, suspensions etc. As worded in the draft policy section 7.1.6 suggest that even isolated minor non-compliances could result in a prosecution, we believe that this would not be the best use of regulatory resource.
South Wales Fire and Rescue Service	<ul style="list-style-type: none"> • I concur with the revision and addition to the Enforcement and Prosecution Policy however as Head of Risk Reduction for SWFRS I would like to see an addition for prosecution for deliberate fire setting which has a significant adverse impact on green spaces across our areas. I would be happy to designate one of my Fire Crime/Land Engagement Team to discuss possible additions further