

Farming Rules for Water Regulatory Review

Wildlife and Countryside Link Response: January 2021

In 2015, Wildlife and Countryside Link¹ [responded](#) to the Farming Rules for Water consultation. We outlined our aspirations for waters free from agricultural pollution; clear, fair and well-enforced regulation to secure good land management; and farmers being supported to renew soil health, and halt soil erosion and pollution. We also welcomed the recognition by Defra that the issue of diffuse pollution required urgent action, and outlined our ambitions for the Farming Rules for Water and their role in tackling this threat to the freshwater system.

Yet our freshwater environment continues to suffer, and diffuse pollution from agriculture remains the most significant threat to our freshwater ecosystems. Latest Environment Agency data shows that 0% of rivers, lakes and streams in England are in good health, with none meeting good chemical standards and just 16% meeting good ecological standards. Of particular concern is that these figures have plateaued, or even declined.

The wellbeing of our freshwater systems is vital to both people and nature, intrinsically connected to the wellbeing and economic vitality of our communities, and to the health and persistence of habitats and wildlife. Already 13% of freshwater and wetland species are threatened with extinction.

The regulation of farming and its implementation, and progress in tackling the threat of diffuse pollution, have been extremely inadequate. There remains a lack of funding and resource for adequate monitoring and enforcement of environmental protections, and for engagement with and advice to landowners. Of 10,600 staff at the Environment Agency, only 40 are involved with farm inspections, meaning that a farm has just a 1-in-200 year chance of being inspected.² The Rules themselves are not ambitious enough to make a major contribution, with baseline rules for regulations set low and incentives for compliance and additional environmental protection and enhancement severely lacking.

Robust environmental regulations, and a strong and effective baseline, are essential for the protection and enhancement of our freshwater environment. They will be crucial to underpin further activity in areas where there is public support for going beyond current minimum standards, such as in improving the state of our globally-rare chalk streams. They are also a crucial foundation upon which the forthcoming Environmental Land Management scheme (E.L.M.) will be built. The Farming Rules for Water have a key part to play in this, and in ensuring that the agricultural sector is appropriately involved in managing the threat of diffuse pollution.

¹ Wildlife and Countryside Link is a coalition of 58 organisations working for the protection of nature. Together we have the support of over eight million people in the UK and directly protect over 750,000 hectares of land and 800 miles of coastline.

² <https://www.gov.uk/government/publications/farm-inspection-and-regulation-review>

We are fully supportive of the aims behind the Farming Rules for Water, but the Rules themselves must be tightened and major issues relating to effective enforcement must be addressed. These improvements should build on the present Rules, further developing their ambition and efficacy.

1. To what extent (if at all) do you think the Farming Rules for Water have been effective in reducing nutrient pollution from agriculture?

The aims behind the Farming Rules for Water are positive. However, these have yet to be achieved. We understand this is partly because it is too early to tell if there have been positive environmental outcomes. However, there are also significant gaps in the Rules, further exacerbated by lack of monitoring and enforcement.

Pollution from agriculture remains a leading cause of damage to the freshwater environment, with excessive levels of nutrients and high levels of pollution. Latest Environment Agency figures show that 0% of rivers, lakes and streams in England are in good health, and the percentage meeting good ecological standards is unchanged since 2016. At present, regulation of farming and its implementation is inadequate. Dame Glenys Stacey in her official Farming Inspection and Regulation Review for Defra found that “enforcement is nowhere near effective enough”, and that there “...is no doubt that a good deal of non-compliance remains unchecked”. She also established that, of 10,600 staff at the Environment Agency, only 40 are involved with farm inspections, meaning that a farm has a 1-in-200 year chance of being inspected.³

This poor water quality is also affecting local wildlife generally in our coastal wetland, blanket bog and woodland reserves.^{4 5} The polluted run-off is affecting important food sources for local biodiversity, including fish and seabird populations. Furthermore, estimates suggest that soil is being lost at 10 times the rate it is being created, risking our future food security. Farmers and enforcement agencies urgently need support to reverse the decline in nature. This underlines the need for new, legally-binding targets for improving water quality and for the restoration of habitats and species, with a clear plan for the changes that must be made in the food and farming system to achieve them.

The baseline for the Farming Rules for Water was set too low. To meet targets of the last round of River Basin Management Plans, it was calculated that phosphorus losses due to agriculture needed to be reduced by 28-43%. In contrast, when the Farming Rules for Water were consulted on in 2015, only a 2.4% reduction in phosphorus was suggested. Whilst the published Rules did build positively from those consulted on, this remains a significant gap. This suggests that - whilst outcome-focused measures (e.g. based on crop need) have the advantage of being considered more proportionate by land managers – in some areas a more prescriptive approach is needed (more akin to NVZ regulations), which can be more straightforward to understand and to enforce. There would be merit in considering action-based approaches for the changes that would deliver the greatest pollution reductions.

There is a role for E.L.M. above a robust and well enforced regulatory baseline to deliver increased levels of nature-based solutions to reduce diffuse pollution from agriculture. Natural flood management, constructed wetlands, ponds and ditches can all play a part. However, funding should

³ <https://www.gov.uk/government/publications/farm-inspection-and-regulation-review>

⁴ <https://www.researchgate.net/publication/225269726> Environmental Change in Headwater Peat Wetlands UK

⁵ <https://www.rspb.org.uk/our-work/our-positions-and-casework/our-positions/water-and-wetlands/current-water-policy-issues/diffuse-pollution/>

be clearly focused on the delivery of public goods, with clear additionality and not used to meet existing regulatory standards or business as usual practices. At the moment, the low bar of the Rules leaves a gap between the regulatory baseline and payments for genuine public goods; the Rules should be strengthened to create a new, higher baseline.

Nutrient pollution from agriculture includes ammonia and greenhouse gas emissions from manure, slurry and other fertilisers. The Rules should therefore be integrated with action to tackle atmospheric pollution, for example the Clean Air Strategy commitments to new regulation.

Efficacy of the Rules is significantly hampered by a lack of funding and resources for a strong, effective enforcement regime. The efficacy of the Rules is entirely dependent on landowner compliance. If standards are not enforced and landowners are not given sufficient information and guidance to assist them in meeting those standards, the impact and success of the Rules overall is compromised. This concern that the Rules can only meaningfully tackle diffuse pollution if adequately enforced was raised in our initial 2015 consultation response, and remains a significant concern. This is therefore discussed in greater detail in later sections.

2. What is your view about awareness of the rules among land managers?

Awareness of the Farming Rules for Water among landowners is poor.⁶ This is a significant cause for concern.

Research has shown that awareness, and the quality of both information and advice received by farmers, is key in determining the uptake and success of schemes designed to change behaviours.^{7 8} The Environment Agency should develop ways to better engage with landowners and stakeholders on the issue of diffuse agricultural pollution, and should be adequately resourced in order to deliver this engagement.

However, whilst important, landowner awareness alone is insufficient to uphold the standards required to protect our freshwater environment and manage diffuse agricultural pollution. Awareness and advice must be underpinned by adequate monitoring and enforcement. This must include both effective inspection regimes to detect non-compliance, and penalties severe enough for non-compliance to act as a deterrent.

As set out in our '[Changing Course](#)' document, the government should commit sufficient funding for the enforcement of regulatory standards, and implement the polluter pays principle to reward compliant businesses fairly. An increase in resourcing for monitoring and compliance will be needed to increase compliance with existing requirements (including basic measures, and objectives for Protected Areas) and to accompany any new regulations. This will need to be significantly more than the £6M/ year calculated for replicating across England the SEPA system for the enforcement of Scotland's General Binding Rules. The government should recognise the significant cost savings overall associated with investing in enforcement.

⁶ For example: <https://promar-international.com/water-rules-do-you-know-if-youre-compliant/>

⁷ Dwyer J and Blackstock K (lead authors) (2007) Understanding and influencing positive behaviour change in farmers and land managers: http://randd.defra.gov.uk/Document.aspx?Document=WU0104_6750_FRP.doc

⁸ Rural Economy and Land Use Programme (2012) Improving the success of agri-environment initiatives: <http://www.relu.ac.uk/news/policy%20and%20practice%20notes/37%20Bullock/PPN37.pdf>

WWF, The Wildlife Trusts, and the RSPB recently commissioned a report by the IEEP, titled 'Risks and opportunities of a post-EU environmental regulatory regime for agriculture in England'.⁹ This sets out findings and recommendations to drive agricultural reform in the UK post Exit from the EU. Highlights are set out below:

1. **Advice** - is critical to help farmers and land managers manage the change ahead and for the successful implementation of basic rules and environmental incentives. Advice should cover management practices as well as compliance, to support farmers and landowners in making changes without negative economic consequences. Examples from the Scottish Environment Protection Agency (SEPA)¹⁰ and Herefordshire¹¹ have shown that advice is critical to compliance with regulation, providing good value for money and an excellent return on investment.

2. **Incentives** - A commitment to incentivise farmers will be essential for achieving the recovery of nature and achieving net zero. For example, farmers may be paid for improved buffer strips around or through their fields which provide food for pollinators and capture and filter run-off. The Government will need to match this commitment with long-term funding at the right scale and ensure there is a baseline of minimum standards considered as good practice. Payments should focus above good practice, to ensure good value for money. As part of the roll out of the new scheme there is a need to work with farmers and land managers on the rationale for utilising nature-based solutions to address many current issues linked to land management, including the climate and biodiversity crises.

3. **Regulation** - A clearly defined set of basic environmental rules across all farmland is required to establish a good practice baseline to progress more ambitious future agri-environment schemes. The full suite of EU based environmental regulations and standards must be secured into English law and the current regulatory framework needs to be updated to fill gaps (e.g. those arising from the removal of cross compliance) and to support new priorities (e.g. climate change and soil health).

An increase in incentives for land managers together with regulation, such as the use of Special Nature Conservation Orders and Water Protection Zones where appropriate should be introduced as a priority. Incentives for land managers additional to meeting regulatory standards are not an 'either/or'. The introduction of tailored Water Protection Zones will also enable a focus on all sources of water pollution, not just agriculture. For example, this could be introduced for floodplains.

Regulation is an essential part of the wider policy package aimed at reducing diffuse pollution and national nutrient surpluses. Where farms and other businesses are expected to meet a high or spatially specific set of regulatory standards, grants and other incentives should also be targeted to aid initial compliance, alongside advice. More generally, we recognise that in some cases a transition period will be needed to address systemic non-compliance, during which funding and financing could be made available to meet baseline good practice and regulators should establish a 'polluter responsibility' to take this up. This transition period requires appropriate, well-planned communication to encourage behavioural change. An increase in resourcing for monitoring and compliance will need to accompany any new regulations.

4. **Effective enforcement** - Non-compliance is widespread and the current enforcement regime is inadequate. The 'Farming Rules for Water' have very poor uptake. Activities such as slurry spreading

⁹ <https://ieep.eu/uploads/articles/attachments/382e1f08-fa94-412a-9314-bbbfcf194d53/Post%20EU%20exit%20Regulatory%20Framework%20-%20Final%20-%20Jan%202020.pdf?v=63747936653>

¹⁰ <https://ieep.eu/uploads/articles/attachments/382e1f08-fa94-412a-9314-bbbfcf194d53/Post%20EU%20exit%20Regulatory%20Framework%20-%20Final%20-%20Jan%202020.pdf?v=63747936653>

¹¹ See: <https://www.wyeuskfoundation.org/news/environment-secretary-comes-to-see-foundations-work>

in inappropriate or illegal circumstances are widespread, in this instance typically because some farmers have inadequate storage facilities.

A new delivery model (set out in the IEEP report referenced above) should help build a more collaborative relationship between farmers, land managers and enforcement agencies by striking a better balance between information, advice, enforcement and incentives. Enough resources are needed to operate a delivery system that requires more enforcement officers, greater access to advice and more farmer engagement.

3. Can the rules be improved to better meet the above aim of reducing nutrient concentrations in water and providing a proportionate baseline for all farmers?

The aims behind the Farming Rules for Water are positive, and should be considered a foundation to build and improve upon. The Rules must not be removed, or weakened. Greater funding and resourcing are required for an effective enforcement regime, and high-quality advice and guidance for landowners, to ensure compliance.

The Rules would be improved if they worked hand in hand with land use change at landscape scale, in addition to action at farm scale. The Rules need strong links with E.L.M., LNRS, and catchment management strategies, in addition to working with the Environment Agency and water companies. E.L.M. should fund activities over and above those required to meet the Rules, to enhance water quality. For example, the rehabilitation of floodplain grassland could significantly contribute to these aims. Floodplains should be recognised in the new E.L.M. scheme, including the Sustainable Farming Incentive component, as a specific land use that should be targeted with support, advice, and incentives to restore species-rich grassland. This should especially be so for land currently managed as arable or maize. However, any replacement of the Rules through adding elements to E.L.M. would contradict the position that E.L.M. will deliver *additional* benefits. The Rules must deliver a robust and well enforced baseline.

The Rules should be revised to ensure that they can be more easily enforced through other means than direct visits by enforcement officers, given that the efficacy of this enforcement approach is significantly constrained by cost.

4. What is your view about compliance with the rules among land managers?

Compliance with the Farming Rules for Water has not improved since their introduction. In fact, the number of breaches has increased. A Freedom of Information request submitted by WWF in November 2020¹² revealed that some aspects of the Rules were inspected at 129 farms during 2019-2020 and, of these, 66 recorded a non-compliance with at least one rule. This is an increase from 2018-2019, when at least 14 breaches were recorded.

Whilst inspections presumably targeted farms thought likely to be in breach, this still represents a high proportion of non-compliance with what were intended to represent the 'basic measures'

¹² Request for information concerning the Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018, submitted to the Environment Agency on 12th November 2020.

needed to tackle widespread diffuse pollution pressures. Given that the Rules, and thus protections for the freshwater environment, depend on landowner compliance, this is a significant concern.

5. Are there any gaps in the rules that are causing an impact on water quality?

There are significant gaps in the Farming Rules for Water created by the loss of cross compliance. Though the Rules reflect some measures previously contained in cross compliance, not all relevant requirements were brought across, and amendments to the Agricultural Act 2020 which could have addressed these gaps were not taken forward.

Maintaining and strengthening existing cross compliance standards (e.g., 1m uncultivated margin) should be incorporated into a new regulatory baseline. For example, new river or catchment-specific requirements for riparian margins could be required in law.

E.L.M. or other PES payments should then significantly expand upon this, for example incentivising land managers to include 6-12 metre margins next to appropriate water courses to deliver much more for water quality and nature's recovery. This should be linked to mapping that identifies the most important places to do so, and the measures that would be of most benefit. In many places, this will not simply be grass buffers or tree planting, but rather more targeted habitat creation and restoration, including around headwaters and across floodplains. Emphasis should be shifted away from simple, single-purpose buffer strips, which research shows have limited efficacy in tackling water quality.¹³ Approaches should favour broader, more naturalised riparian corridors that can have benefits for biodiversity, natural flood management, and water quality. Ideally, this would be included as a new regulatory baseline over time, for example at the end of the transition period.

The 'Investigating Agricultural Compliance Rates' report commissioned by WWF in 2014 identified ten key measures to address diffuse pollution. In the 2015 Farming Rules for Water consultation, [we highlighted](#) that the following measures were not adequately addressed in the then-existing or proposed rules for farmers:

- Manage soil exposure during winter months,
- Take steps to address and repair soil compaction.
- Introduce riparian buffer strips.
- Do not grow high risk crops on sloping ground.
- Separate clean and dirty water in farmyard run-off.
- Optimum maize management.
- Increase soil organic matter.

These gaps have yet to be fully addressed, with several of these listed in the current Rules as 'examples of reasonable precautions', rather than as requirements. Addressing these gaps would help to further strengthen the Rules. Not all would be appropriate as blanket rules, and thus expert guidance on best practice is essential.

Geographically targeted legislation may also be effective. For example, riparian buffer strips may not be appropriate in circumstances where livestock poaching is beneficial, whereas in some circumstances wider buffer strips of 30m or more could be beneficial to water quality and biodiversity.

6. What are your views on the current enforcement regime?

The current enforcement regime is seriously underfunded and under resourced, undermining the efficacy of enforcement and the Farming Rules for Water overall. Between 2009-2019, Environment Agency funding fell 63%, total staff fell 25%, and prosecutions of businesses fell 88%. 2012-2019 saw the number of Environment Agency enforcement notices fall 69.5%.¹⁴ More resources and funding are urgently required if there is to be an adequate, credible enforcement regime for the Rules. Adequate enforcement must include both effective inspection regimes to detect non-compliance, and severe enough penalties for non-compliance to act as a deterrent.

Currently, officers are required to monitor for non-compliance. This means that certain rules, such as not using products during heavy rain, are essentially unenforceable as farm visits are so rare. Existing protocol is that officers will respond reactively to a serious incident, but it is not common practice for officers to undertake systematic checks to identify farmers in contravention of the Rules. Data obtained by WWF shows that the Environment Agency's current resources only allow for visits to <1% of farms each year. In 2018, 25-27% of the activity of 30 FTE staff was allocated directly to advice-led regulatory visits. In 2019, this fell to 27% of the time of 27.6 FTE staff.¹⁵ The total budget for Environment Agency prosecutions and enforcement has significantly fallen, from £120m to just £50m.¹⁶

Data obtained by WWF also shows that in 2018-2019, just seven enforcement letters and no enforcement notices were issued for non-compliance. In 2019-2020, this fell to just three warning letters, five advice and guidance letters, and no enforcement notices. To date, the Environment Agency has not served any notices on any Farming Rules for Water breaches.¹⁷

In Scotland, there is already a working model for enforcement of basic environmental measures with the implementation of the General Binding Rules by the Scottish Environment Protection Agency (SEPA). This collaborative approach combines advice with enforcement through a 'two strikes' model. SEPA's approach is regarded as equitable and balanced by farmers in Scotland.¹⁸ This approach is further described in Figure 1 (below).

¹⁴ <https://www.unchecked.uk/wp-content/uploads/2020/11/The-UKs-Enforcement-Gap-2020.pdf>

¹⁵ Request for information concerning the Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018, submitted to the Environment Agency on 12th November 2020.

¹⁶ <https://www.endsreport.com/article/1705037/ea-heads-blame-budget-cuts-decline-enforcement-monitoring>

¹⁷ Request for information concerning the Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018, submitted to the Environment Agency on 12th November 2020.

¹⁸ https://www.wwf.org.uk/sites/default/files/2018-04/WWF_Saving_The_Earth_Report_HiRes_DPS_0.pdf

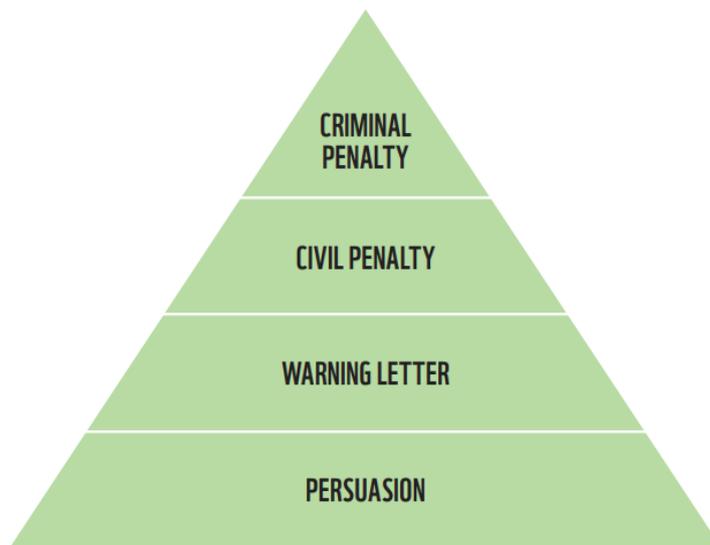


Fig.1 The SEPA Taskforce Enforcement Pyramid, from 'Saving The Earth' (WWF, 2018).

An increase in monitoring should be a key component of any enforcement regime. As we set out in our '[Changing Course](#)' document, the current approach to monitoring the water environment is fundamentally flawed and with recent budget cuts has become even less effective. Greater investment in the Environment Agency and Natural England to perform this role is desperately needed.

A lack of robust monitoring generates inaccessible, inaccurate and incomplete data leading to poor management decisions and substantial misdirection of resources. A robust, quality-assured data baseline and systems for collecting, managing and using data will become even more important as we need to find innovative ways to measure effectiveness of approaches in the context of managing catchments and water bodies in the face of the climate and nature crises. Government needs to ensure effective monitoring relevant to decision-making will be adequately resourced, and explore how monitoring co-operatives such as Chesapeake Bay's in the USA might augment water sector understanding. Data and meta-data, complying with agreed standards could then be published on open-source platforms to form a sentinel network of evidence. The Environment Agency and partners would then be in a position to carry out agile investigations to identify specific pressures, which could be addressed at a catchment scale.

Our '[Changing Course](#)' document also sets out the key ask for the government to 'commit to sufficient funding for the enforcement of regulatory standards and implementation of the polluter pays principle in order to ensure that environmental regulations applying to agriculture can be effectively and consistently enforced.' There must be adequate funding for the EA to carry out its required duties and responsibilities for the environment.

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This response is supported by the following Link members:

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