

Response to Defra consultation on new basic rules for farmers in England to tackle diffuse water pollution from agriculture

Wildlife and Countryside Link

The comments in this document have been submitted by the Agriculture and Blueprint for Water Working Groups on behalf of the Wildlife & Countryside Link (Link). Wildlife and Countryside Link brings together 46 voluntary organisations concerned with the conservation and protection of wildlife, countryside and the marine environment. Our members practice and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic and marine environment and biodiversity. Taken together our members have the support of over eight million people in the UK and manage over 750,000 hectares of land. More information is available at <http://www.wcl.org.uk/>

This consultation response is supported by the following ten organisations:

- Amphibian and Reptile Conservation
- Buglife
- Friends of the Earth England
- Institute of Fisheries Management
- RSPB
- Salmon & Trout Conservation UK
- The Wildlife Trusts
- Waterwise
- Wildfowl & Wetlands Trust
- The Woodland Trust

Overarching messages:

- Wildlife and Countryside Link has set out our shared vision for more sustainable agriculture in our publication 'Farming Fit for the Future' (www.farmingfitforthefuture.org.uk). Among our aspirations are waters free from agricultural pollution; clear, fair and well-enforced regulation to secure good land management; and farmers being supported through advice to renew soil health and halt soil erosion and pollution. We agree that the problem of diffuse pollution urgently needs to be addressed and welcome the recognition by Defra that advice and incentives alone cannot fully achieve this.
- We urgently need a step change in addressing the problem of diffuse pollution. Freshwater habitats are vital for nature as well as societies, economies and individuals. More needs to be done to help our aquatic habitats and the wildlife that depends on them to thrive. Pollution continues to be the biggest problem facing the freshwater environment and just 17% of England's rivers are in good health. England has one of the highest proportions of water bodies affected by pollution pressures in Europe (http://ec.europa.eu/environment/water/water-framework/facts_figures/pdf/Point-

[diffuse%20pollution-lakes-rivers-2012.pdf](#)), and a high proportion of our Special Areas of Conservation and Special Protection Areas are affected by diffuse pollution.

- We have previously (in our response to cross compliance proposals) urged the Government to introduce a set of basic rules as part of Good Agricultural and Environmental Condition (GAEC) standards 4 and 5. We believe that the GAECs as written fail to provide adequate protection for soils and water, being overly dependent on an inspector observing 'significant' erosion taking place.
- Whilst we support the proposed approach of introducing legally binding basic rules, this is conditional on them making a meaningful contribution to the problem posed by diffuse pollution. They can only do this if they are adequately enforced, however, the inadequate monitoring and enforcement described in the consultation will do little to improve the practice of those farmers who are not already following these basic standards of good practice.
- The current proposal states that the new rules will not be part of cross compliance. We have been told by Defra officers and it is stated in paragraph 3.10 of the consultation that this *'concur with feedback from interested parties'*. Several of our members attended workshops that were held as the rules were developed and cannot recall discussions around whether they should form part of cross compliance and certainly nothing that would constitute a consensus that they should not. We propose that a) the new rules (subject to the amendments we propose below) should be incorporated into cross compliance, so that the potential loss of some or all of the Basic Payment will be a strong incentive for compliance; and b) the level of cross compliance inspections is reviewed to ensure high levels of compliance are achieved. Without this, we fail to see how the new measures can provide a significant contribution to improving the quality of our water environment. Large sums of public money are paid to farmers in the form of Common Agricultural Policy subsidies. It is entirely reasonable to expect farmers in receipt of these payments to adhere to standards of good practice.
- These rules will have limited impact in terms of addressing the surface water bodies and protected areas that are failing to meet the requirements set out in the Water Framework Directive because of diffuse pollution from agriculture. This is because the rules have to set a level of minimum acceptable practice that is, by definition, unable to take into account the variation in farm practices, soil types, topography or sensitivity of receptors that often mean a higher standard has to be met. These standards cannot always be met using the existing suite of voluntary and incentivised schemes and the full range of currently available regulatory measures will be needed if we are to meet those specific challenges.
- Subject to the concerns set out above, and to our comments below regarding the clarifications / alterations that are necessary, these basic rules may help to ensure that a baseline of good practice can be legally enforced across England.

The consultation questions

Q1. If we introduce new basic rules to reduce diffuse pollution from agriculture do you agree with the principles set out in paragraph 2.21?

No

What are the key reasons for your view?

It needs to be much clearer that the principle to “maximise reductions in diffuse pollution and benefits to the wider environment” is the primary objective. Pursuit of the first two principles (relating to costs and benefits to farmers and the economy) must not constrain the level of environmental benefits achieved (see also our response to question 6).

We support the principle “focus on advice to introduce any new rules”. Evidence and experience to date shows that the quality of information and advice received by farmers is key in determining uptake and success of schemes designed to change behaviours (see for example *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; 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>)

Experience also suggests that for advice to be effective, it has to be provided by knowledgeable, experienced source. Given this, we continue to be deeply concerned about cuts to the government agencies responsible for providing advice. We ask Defra to set out clearly who is going to provide this advice and how, and what resources will be made available to them. It is important to note, however, that advice alone is unlikely to be sufficient to secure behaviour change at the required levels. To take a closely related example, the industry-led Metaldehyde Stewardship Group has been operating since 2008 to promote best practice in use of slug pellets (<http://www.getpelletwise.co.uk/>). This voluntary approach has proved inadequate to tackle the problem of metaldehyde in waterways, leading several water companies to introduce additional schemes (see for example <http://www.anglianwater.co.uk/environment/our-commitment/our-plans/slug-it-out.aspx>, <http://www.thameswater.co.uk/about-us/18682.htm>). We agree that advice to farmers must be a key delivery mechanism for the new basic rules, but it must be underpinned by adequate enforcement (which requires both effective inspection regimes to detect non-compliance, and severe enough penalties for non-compliance to act as a deterrent). In our 2015 publication *Water Matters* (<http://blueprintforwater.org.uk/wp-content/uploads/2015/08/Blueprint-for-Water-Water-Matters.pdf>), Link stated that by 2016, in order to tackle diffuse water pollution, there needs to be a significant increase in inspection rates to ensure that regulation is properly enforced and incentives and targeted regulatory action are deployed in areas of greatest sensitivity.

Q2. Please tick those basic rules above that you consider most appropriate to add to the existing regulations in terms of safeguarding water quality and supporting competitive farming? [all except no. 11]

Q3. Do you have any comments on individual rules? Yes.

Please note our answer to question 2 assumes that our proposed alterations are made: we would not support the inclusion of these rules without the specified changes.

1. Locate field manure storage at least 10 metres from a watercourse

This rule alone is not sufficient to protect water courses from surface runoff from manure heaps. The rule should be amended to include the relevant requirements from Section N of Cross Compliance SMR 1. We suggest that these should include at least the following:

- make sure your field heap is at least 10 metres from any surface water (including ditches) or land drain, or 30 metres if the land slopes at 12 degrees or more
- make sure the location of any field heap is not liable to being waterlogged or flooded
- locate field heaps at least 50 metres from a spring well or borehole
- temporary field heaps must: be solid enough to be stacked in a free-standing heap; not give rise to free drainage from within the stacked material

We also question why this rule specifies a water course rather than as in rule number 5 which states “any surface water or a wetland”. This could cause confusion as to where the rules apply. We suggest that the approach must be consistent throughout, making clear that the rules apply to any surface water or wetland.

2. Use a fertiliser recommendation system (e.g. RB209, PLANET etc.), taking into account soil reserves and organic manure supply.

We welcome this rule. Balanced fertiliser application is also an important aspect of Integrated Pest Management (<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02009L0128-20091125&from=EN>) – this should be emphasised in the guidance given to farmers.

3. Spread fertilisers and manure accurately, e.g. by using calibrated and maintained machinery.

We support the intention of this rule but the proposed wording is too vague to provide a “*clear minimum standard for all*” (one of the principles on which these rules were drafted). This should include some more specific instruction.

We note that the Agricultural Engineers Association (AEA) has this year announced the Spreader Testing Scheme (<http://www.aea.uk.com/news/aea-to-launch-national-spreader-testing-scheme-at-tillage-live>) which advocates having spreaders tested on a regular basis (similar to the legal requirement which already exists for pesticide spraying equipment). We are told that a protocol for examining, benchmarking and setting the standards has been drafted and is in the final stages of confirmation. We suggest that Defra works with the AEA to explore the scope for phasing in a specific testing requirement for spreaders as part of the new basic rules.

We suggest that a distinction needs to be made between spreading composts and solid manures as opposed to slurry. Because of the low moisture content of solid manures (and lower readily-available nitrogen), there is less risk of phosphorus, nitrogen or faecal indicator organisms entering watercourses when they are spread on fields. It is important that the new rules do not place unnecessary (i.e. not necessary to protect water quality) burdens on less intensive/ livestock operations.

4. Use a feed planning system to match nutrient content of diets to livestock feeding requirements.

Link feels that more clarity is needed here, including on the need for this rule and the intended outcome. We assume that this rule would only apply to concentrates, but it is necessary to clarify whether this is the case or if Defra envisages that this rule would apply to pasture-based systems. We would expect that pasture-based systems should pose a lower risk to water

quality (lower density of livestock, higher roughage content in diet, lower water content in faeces). It is important that the rule does not impose unnecessary administrative burdens on High Nature Value farms and other low-intensity systems.

5. Livestock feeders must not be positioned within 10 metres of any surface water or a wetland.

We support this rule but have some concerns about possible impacts on conservation grazing on habitats which may be defined as wetlands in their entirety (for example wet grassland). We therefore propose that provision is made for exemptions in the case of specific conservation need (for example where grazing is necessary to maintain the condition of a priority habitat, or is part of an agri-environment agreement).

6. Avoid severe poaching where likely to pollute a watercourse (compliance achieved if already meeting GAECs 4 & 5).

Poaching/ trampling is an important part of river bank and wetland management for certain wildlife (further discussion of this point at https://jeremybiggs.files.wordpress.com/2010/08/british-wildlife-article_jul10-2.pdf). However we agree there is a clear need to protect water quality by securing appropriate livestock densities and sensitive land management. The rule also needs to set a clear standard for farmers to follow, and to be legally enforceable. We therefore suggest that ‘severe poaching’ needs to be carefully defined and communicated, perhaps using photos to illustrate examples of poaching likely to cause pollution.

7. Take action to prevent soil erosion and run-off from tramlines, rows, irrigation and high risk sloping lands or those lands highly connected to surface water. (Compliance achieved if already meeting GAECs 4 & 5).

The following comments apply to rules 6 and 7.

We do not believe that meeting GAECs 4 and 5 is enough to achieve the desired environmental impacts of these rules. The GAECs are not sufficient to protect soils and water (see *Informal cross compliance consultation: soil GAECs - Wildlife and Countryside Link response, September 2014*). The GAECs do not prevent inappropriate land management practices: for example leaving soils under maize stubble over winter or ploughing up and down slopes. GAEC 4 includes a list of “acceptable agronomic reasons for not providing cover” which provide a very broad loophole to avoid meeting the requirements of the standard. Compliance with GAEC 5 is effectively determined by whether an inspector observes signs of soil erosion, which given the low rate of inspection means that a lot of bad practice is likely to be missed, and at any rate only picked up once the damage has been done. Furthermore, erosion is only considered ‘significant’ if it is over a single area greater than 1 hectare, or 20m x 2m along a water course.

The new rules should be redrafted, drawing on evidence and expert opinion as needed, so as to address the significant shortcomings of the existing cross compliance standards. Otherwise, it is not clear to us what is achieved by including them. New measures might include something similar to the Scottish General Binding Rules which states that no land should be tilled within 2m of a surface water body or wetland and 5m of a well, spring, borehole used for human consumption. At the least:

- The list of acceptable types of winter cover should be amended to exclude any land uses which are known to leave soil vulnerable to erosion (e.g. maize stubble)
- Definitions should be drawn up of 'high risk lands' (based on features such as soil type and depth, slope, rainfall) and high risk land uses and management practices. High risk practices should be forbidden on high risk lands.
- Any erosion within 5m of surface waters, or which adversely affects the growth, quality or diversity of natural or semi-natural vegetation, should be considered 'significant'.

8. Do not spread more than 30m³/ha of slurry or digestate or more than 8t/ha of poultry manure in a single application between 15th October and the end of February. No repeat spreading for 21 days.

We support the inclusion of this rule, which is in line with cross compliance SMR1 (which currently only applies in nitrate vulnerable zones). We recognise that for some farmers a cost will be incurred in installing additional slurry storage capacity, but we believe that requiring this is in line with the polluter pays principle. As previously stated, we agree with the proposed plan to allow a grace period after these rules come into force to allow farmers to make the necessary changes.

We note that poultry manure, being high in phosphate, poses particular risks to water quality and suggest that areas with high densities of poultry farming should be treated as high risk for the purposes of inspection and enforcement.

Link also suggests that the specific dates are kept under review, as with changing weather patterns and increasingly intensive summer rainstorms it may become necessary to alter them.

9. Do not spread manufactured fertiliser or manures at high-risk times or in high-risk areas.

We support the intention of this rule but the proposed wording is too vague to provide a "clear minimum standard for all" (one of the principles on which these rules were drafted). Additional definitions of "high-risk times" and "high risk areas" are needed. We suggest this rule should use the wording of SMR 1 Section A.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397044/Cross_c_ompliance_handbook_v2_web.pdf

For reference, the Scottish General Binding Rules make the following stipulations:

- Do not spread within 50m of any well, spring, borehole used for human consumption
- Do not spread on soils less than 30cm deep
- Do not spread on slopes greater than 15°

10. Incorporate manures into soil as soon as possible and within 24 hours after application at the latest (proposed good practice, not regulatory).

We support the inclusion of this rule and note that similar requirements already apply in Nitrate Vulnerable Zones under SMR1. However it is not clear what will be achieved by nominally including this as a voluntary 'good practice' measure alongside the new regulatory requirements, given that it already forms part of Defra's Code of Good Agricultural Practice (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/268691/pb13558)

[-cogap-131223.pdf](#)). Instead we suggest that this rule should be included with the others as a regulatory requirement. It also needs to be made clear that this rule applies only when applying manures to bare land or stubble, not to grassland.

In guidance to farmers around this measure, it should be noted that incorporation can significantly increase nutrient use efficiency and therefore reduce the amount of fertiliser needed. It is essential to take account of this when determining application rates or overall nitrate loss can be increased (Scot Gov 2009, Initial Evaluation of Effectiveness of Measures to Mitigate Diffuse Rural Pollution. Report under project ADA/011/07)

11. Exclude livestock from watercourses (excluding uplands and Common Land) (proposed good practice, not regulatory).

We do not support this as a blanket requirement, but we do agree that there is a need for improved guidance on best practice in this area. We suggest that such guidance should be included as part of rule 6.

In many cases, low impact poaching and grazing is of positive benefit for rivers and streams, and livestock exclusion could significantly impact on the site condition of some legally protected sites and other areas supporting priority habitat. The fencing of a waterway to secure exclusion of livestock can be vital to protect water quality in some circumstances but, depending on the management of fenced buffers, can have a negative impact on the ecology of river systems and other watercourses. For example, in some areas, breeding waders are dependent on foraging grazed fringes to shallow channels in wet grasslands and a number of invertebrates require a degree of poaching and grazed banksides with structural variety. In addition there may be landscape and access considerations which would make fencing inappropriate. Fencing of every watercourse would mean numerous wildlife benefits will be lost and landscape quality may be affected, as well as representing a significant cost to farmers since there are considerable costs involved in both erecting and maintaining fences and installing alternative drinking supplies for livestock

Fencing should not be the default, but should only be used where it is appropriate to address known problems in a specific area. Where fencing is necessary, access should be provided for management of riparian buffers especially in relation to controlling spread of non native problem plants.

Q4. Do you have any comments on the proposed approach to verification?

Yes. There is a strong reliance on 'remote sensing', which as we understand it will be used to identify priority areas for enforcement. For some of the proposed rules it is not at all clear how this would work (in particular rule 3 on calibrating spreaders). We would like to see more detail of what 'remote sensing' will involve in each case, and analysis of the costs and benefits of using this approach. For example, what staff time and skills will be needed to analyse the data generated by remote sensing? What investment will be needed in remote sensing equipment or to purchase access to existing data sets? How accurate are the proposed techniques? One clear disadvantage of remote sensing is the lack of any interaction with the farmer. It would not seem conducive to developing good farmer understanding of and buy-in to the new rules if their practices are being assessed by remote machines rather than by an inspector they can talk to.

If these rules are mandatory but do not form part of cross compliance then that poses significant challenges to cost-effective verification as well as enforcement. This consultation proposes that the Environment Agency takes on responsibility for verifying and enforcing the new legislation whilst the Rural Payments Agency continues to have responsibility for ensuring that cross compliance rules are met. We have previously raised concerns that the infrequent nature of RPA inspections reduces the effectiveness of cross compliance measures. The current proposal means that even these infrequent inspections will not cover those parts of the regulation that are not already required by cross compliance. 84% of farmers responding to a consultation by the [National Audit Office](#) thought that '*oversight bodies should coordinate their activities more*' and yet a body carrying out farm visits to check cross compliance will not also be able to ensure this legislation is properly enforced.

Q5. Are there any additional rules or good practice which you feel should be added? If Yes please give details.

Yes. Work commissioned by WWF (*Investigating Agricultural Compliance Rates, produced by Alex Inman Consulting for WWF, June 2014*) identified ten key measures to address diffuse pollution. Of these, the following are not adequately addressed in the 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

We believe these gaps must be addressed in order to achieve the aims that have been set out in the consultation of improving water quality as well as agricultural productivity and efficiency. This is the opportunity to lay out a regulatory baseline that really can help reduce diffuse pollution and the benefits to all that this will result in.

In particular, we believe that a rule against growing high risk crops on sloping ground should be included in these new basic measures (to include suitable definitions of 'high risk crop' and degree of slope).

However, not all of these would be appropriate as blanket rules: for example as discussed above riparian buffer strips may not be appropriate in circumstances where livestock poaching is beneficial. Conversely in some circumstances wider buffer strips (up to 30m) could be highly beneficial to water quality.

Geographically targeted legislation might be a suitable approach to address some of these gaps. Improved guidance on best practice will also be important. Such guidance should also include wider considerations such as better soil husbandry, reducing the impacts of pollution from sub-surface land drainage systems, sediment traps, pasture pumps, invisible fencing, water storage and pooling features in arable areas.

We would also encourage Defra to take this opportunity to reinforce the links between nutrient management and Integrated Pest Management, and to address any gaps in the rules governing pesticide use with an impact on water quality.

Q6. Do you agree or disagree with the approach to compliance and enforcement in paragraph 3.7? Agree/Disagree? What are the key reasons for your view?

Disagree.

We agree that the introduction of new legal requirements must be supported with advice and information to farmers: the emphasis must be on helping farmers to comply and, critically, to understand *why* they are being asked to do this. However, this approach must not weaken the fact that these are legal requirements and they apply to all farmers. We are concerned by language such as 'optimum level of uptake': the stated aim should be 100% uptake. Otherwise, there is a risk that, even though these rules will be written into regulation, they will be perceived as 'optional' by some farmers. This not only limits the environmental improvements that can be achieved with these rules, but undermines the whole concept of a regulatory baseline. We understand that given the limited resources available, it is necessary to prioritise implementation in high risk areas. We are concerned, however, that farmers could perceive this as unfair, with those in areas deemed 'high risk' feeling that they are disproportionately affected, while those outside target areas could feel that the rules do not apply to them. It needs to be clear from the outset that, although inspections may be largely targeted according to risk, all farmers are required to comply with the rules.

In our view, the most rational course of action would be to incorporate the new rules into the cross compliance baseline. As stated in the consultation document, all of these rules are already recognised as good practice. Enforcing them cannot be considered to be '*placing a disproportionate burden on farm businesses*'. It is reasonable for society to expect farmers to deliver a certain level of environmental protection.

We agree that additional enforcement effort needs to be focused on priority catchments. Experience in Scotland with General Binding Rules has demonstrated that such a targeted approach can be effective in securing behaviour change, but also that it requires significant investment of agency staff time in carrying out farm audits and repeat visits. We suggest that the enforcement of the new rules in England should build on the lessons learned in Scotland, including informing an estimate of how much staffing resource will be required to effectively implement the new rules. We could not support an approach whereby the new rules were written into regulation but no adequate effort was made to actually enforce them on the ground.

We understand that Defra proposes to put the new legislation in place immediately, but to allow a lead-in time for farmers to make the necessary changes before prosecution could take place for non-compliance (similar to the Scottish General Binding Rules approach, which initially allowed farmers two 'warnings' before prosecution). We agree that this approach strikes the necessary balance between addressing the problem of diffuse pollution through a 'polluter pays' approach, without making unrealistic demands on farming businesses.

We note a reference to use 'earned recognition' to 'minimise burdens on farmers'. Any use of earned recognition must be placed on clear evidence that compliance with the farm assurance standard in question is a reliable predictor of good practice in the relevant areas. The

inspection regime associated with the assurance standard must also be adequate to demonstrate that compliance is genuinely high, rather than poor practice going undetected.

Q7. Do you agree or disagree with this approach to streamlining regulation? [paragraph 3.9] Agree/Disagree? Please give reasons for your view.

Disagree. It is not apparent to us that linking these rules to cross compliance would make them any less 'simple' or 'coherent'. On the contrary, failing to include these rules in cross compliance would create a confusing double standard for farmers. We need clear, consistent messaging for all. Adding basic rules is an additional bureaucratic burden for farmers to get their heads around whereas incorporating them into cross compliance which is already an understood process for farmers would streamline the process.

We also have concerns that any attempt to combine existing legislation into one Statutory Instrument would risk losing some of the necessary detail from existing legislation. Any 'streamlining' exercise must not result in a weakening of environmental protection. We would suggest that, from a farmer's point of view, it is more important that rules are consistent and clearly defined than which piece of legislation they relate to.

Q8. Do you have any further evidence it would be helpful for Government to consider as this policy is developed further?

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