

Wildlife and Countryside Link response: Rapid Review of the Farming Rules for Water Statutory Guidance

29th November 2024

This consultation response is on behalf of Wildlife and Countryside Link (Link), a coalition bringing together over 80 organisations to campaign for the natural world.

Summary

Wildlife and Countryside Link welcomes this opportunity to input to the Rapid Review of the Farming Rules for Water Statutory Guidance.

The Statutory Guidance requires urgent reform. As currently written, it contradicts the aims of the Farming Rules for Water, in that it effectively allows or even encourages breaches of the Rules with regards to manure application. This has led to several environmental NGOs raising legal complaints, and indeed the Office for Environmental Protection has now found that the Guidance may be unlawful.

The Statutory Guidance must be amended to remove these loopholes.

We understand that the scope of this Rapid Review is limited to the Statutory Guidance. However, it cannot be ignored that the efficacy of the Rules in minimising pollution and protecting nature is also constrained by the lack of sufficient resourcing and capacity within the Environment Agency to properly monitor, advise, and enforce the Rules. We therefore reference these challenges in our response.

We would be pleased to discuss any of the points raised in our response further.

Questions

A. Retention of the Statutory Guidance in Its current form

1. Should the Statutory Guidance be retained in its current form? If so, why?

No, the Farming Rules for Water (FRfW, or 'the Rules') Statutory Guidance should not be retained in its current form.

As written, the Statutory Guidance conflicts with the FRfW, in that it may effectively encourage breaches of the Rules. For example, Section 2.2 of the Guidance states that land managers can apply manures above target levels if ‘it is not reasonably practicable’ to avoid exceeding target levels. This means that the Guidance creates an exemption that does not exist in the Regulations. Indeed, the OEP [stated in January 2024](#) that the Guidance ‘reads as an attempt to create an exemption from, or a defence to a breach of, the requirements of Regulation 4(1)(a)(i) which is not provided for in the Farming Rules for Water and which Parliament has not ratified’. The OEP also states that this may mean that the Guidance is unlawful.

Language permitting pollution if its “not reasonably practicable” to prevent it has also been shown to be unhelpful in the context of Combined Sewer Overflows. The phrasing can constitute a license to pollute.

Furthermore, the Statutory Guidance conflicts with the FRfW by stating that applications of manure are based on assessments of soil/crop need across the entire year, whereas the FRfW require assessments of soil/crop need at the time of proposed application only. Assessments of soil/crop need must be based on time of application in order to prevent diffuse pollution.

Concerns with the Statutory Guidance have led to legal complaints and challenges, including from several eNGOs.^{1 2} Indeed, [as of November 2024](#), the Office for Environmental Protection has launched an investigation into the Statutory Guidance due to these concerns. This states that the OEP believes the guidance ‘may be unlawful’, and that ‘This guidance is likely to be relied upon by farmers and may therefore lead to breaches of the regulations when applying manure or fertiliser to the land’.

2. What would be the impact, from your point of view, of retaining the Statutory Guidance in its current form?

As discussed, the Statutory Guidance as written conflicts with and may effectively encourage breaches of the FRfW. This means that the aims of the Rules, to prevent pollution and therefore to protect nature, are being undermined.

Retaining the Guidance in its current form would mean that agricultural pollution is not effectively regulated, that breaches of the Rules continue, and therefore that water quality

¹ WWF and Client Earth legal complaint: [UK Government may have broken law on river pollution - watchdog confirms | ClientEarth](#)

² River Action Judicial Review: [Farming practices will have to change, rules judge following River Action claim over River Wye | Leigh Day](#)

does not improve – or indeed, continues to decline. This is not consistent with Government’s manifesto commitments to clean up the water environment, nor with legal targets to halt nature’s decline by 2030, or to achieve ‘good’ status for waterbodies by 2027. Further, it threatens achievement of the sector-specific legal target to secure a 40% reduction by 2038 of Nitrogen, Phosphorus and sediment pollution entering the water environment through agricultural diffuse pollution.

B. Amendment of the Statutory Guidance

1. Should the Statutory Guidance be amended? If so, why?

Yes, the Statutory Guidance should be amended. As discussed, it is not fit for purpose, and may be unlawful.

The Statutory Guidance contributes to a lack of clear regulatory baseline, which causes problems for environmental schemes such as ELMs and for efforts to balance nutrient levels across catchments.

2. What amendments do you consider would improve the Statutory Guidance and why?

Loopholes in the Guidance should be closed, in order to remove inconsistencies between the Guidance and the Rules. The role of such guidance should be to clarify, rather than circumvent, the regulations to which it relates.

Examples of circumvention can be found in the exemptions set out in Section 2.2 of the Guidance, which allow land managers to apply manures above target levels if they can demonstrate that ‘it is not reasonably practicable [not] to do so’ or that ‘they have taken all appropriate reasonable precautions to help mitigate against the risk of diffuse agricultural pollution’. The examples provided of ‘not reasonably practicable’ are extremely broad, applying whether a farm generates its own manure or imports it, and relate to measures that ‘cannot reasonably’ be taken – however these caveats are not further defined, creating a situation where any number of reasons could potentially be used as justification for causing pollution. These exemptions do not exist in the FRfW regulations.

A further improvement would be to amend the Guidance to effectively explain how the Rules link across to environmental schemes, especially ELMs which uses public money to deliver ‘public goods’. The Guidance should clarify that compliance with FRfW regulations is a baseline requirement for all, and that any public goods and associated payments come on top of this.

This will help secure value for money for the taxpayer, ensuring that ELMS funding supports public goods provision rather than regulatory compliance.

3. What would be the impact, from your point of view, of making the amendments you suggest?

Amending the Statutory Guidance will make the Rules more enforceable. It will also address the inconsistencies between the Rules and the Guidance, so that the Guidance no longer encourages breaches of the Rules.

This means that the Rules can be implemented and enforced as intended, to prevent diffuse pollution and thereby to improve water quality. It makes a start towards securing a clearer, stronger regulatory baseline for agriculture which will help enable delivery of environmental schemes and facilitate cross-sectoral coordination – for example, as with nutrient neutrality and catchment nutrient balancing.

However, it must be acknowledged that the Statutory Guidance is not the only factor constraining the efficacy of the Rules in regulating diffuse pollution. Funding and capacity gaps are undermining the ability of regulators to advise, monitor and enforce the Rules, thereby further constraining their efficacy and intended purpose.

For example, information from FOI requests submitted by ClientEarth and WWF [shows that](#) in the period January 2020 to December 2021, the Environment Agency conducted 2,213 inspections of three agricultural regulations including the FRfW.³ Breaches were identified in almost half of farms. However, the checks accounted for less than 2% of farms per year, and only one sanction was applied in this period.

For breaches of the Regulations, the Agency have available to them a range of criminal and offence specific responses (warning, formal caution, prosecution) and civil sanctions (compliance notice, restoration notice, fixed monetary penalty, variable monetary penalty, stop notice, enforcement undertaking).⁴ The almost complete lack of utilisation of these tools appears at odds with the large number of breaches identified and the significant impact of agricultural pollution on the water environment (as quantified by WFD ‘Reasons for Not

³ In full, these regulations are: the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010 (SSAFO); the Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018 (known as the Farming Rules for Water); and the Nitrate Pollution Prevention Regulations 2015 (Nitrate Regulations).

⁴ See list of sanctions: <https://www.gov.uk/government/publications/offence-response-options-environment-agency/land-quality-offences>

Achieving Good Status), and it appears likely that the chilling effect of the guidance upon regulatory action may be a factor in this.

4. Do you consider that any transitional arrangements would be needed in implementing amendments to the Statutory Guidance and, if so, what should these be?

It is vital that the review of Statutory Guidance is concluded rapidly, and Government's decision on the future of the Guidance implemented as soon as possible. Implementing the amended Guidance as soon as possible will help to avoid the inevitable uncertainty and delay of a transitional period, and will allow farmers to effectively plan ahead for next autumn / winter.

The mistakes made around the original roll-out of the FRfW should not be repeated. To guard against this, the amended Statutory Guidance must be accompanied with proactive training and advice – for example, training events online and in person.

C. Withdrawal of the Statutory Guidance

1. Should the Statutory Guidance be withdrawn? If so, why?

No. As discussed in response to section B, the Statutory Guidance should be amended. Although withdrawal would deal with the inconsistencies, it would also mean the loss of other parts of the guidance which are helpful, such as sections discussing nutrient management planning and soil testing.

2. What would be the impact, from your point of view, of removing the Statutory Guidance altogether?

We are concerned that simply removing the Guidance altogether will not be practical, and risks leaving both regulators and farmers in an uncertain transitional period.

3. Do you consider that any transitional arrangements would be needed in implementing such a withdrawal and, if so, what should these be?

As discussed above, we are concerned that withdrawing the Guidance risks creating further delay and uncertainty. If the Guidance were to be withdrawn, Government should ensure that new Guidance is rapidly put in place to allow farmers to effectively plan for next autumn / winter, accompanied with proactive training and advice.

Please comment generally:

D. How does the Statutory Guidance affect you or the individuals or sectors that you represent?

Wildlife and Countryside Link is a coalition of organisations working to protect and restore nature. Diffuse agricultural pollution is a leading driver of poor water quality. [40% of all water bodies in England](#) are affected by pollution from rural areas (the majority of which is agricultural diffuse pollution), with estimates that 50% of nitrate pollution, 25% of phosphorus in the water environment and 75% of sediment pollution comes from agriculture.

It will not be possible to achieve legally-binding targets under the Environment Act, including to halt the decline of nature by 2030, or to bring waterbodies to ‘good’ status by 2027 without tackling this agricultural pollution. Amended Statutory Guidance – alongside adequate funding for regulators – will be required to properly implement and enforce the Farming Rules for Water, to manage agricultural pollution and restore water quality. Effective implementation will provide a level playing field for farmers and land managers along with certainty to enable forward planning.

Wildlife and Countryside Link (Link) is the largest nature coalition in England, bringing together 86 organisations to protect the natural world.

For questions or further information please contact:

Ellie Ward, Senior Policy Officer, Wildlife and Countryside Link E: eleonor@wcl.org.uk

Wildlife & Countryside Link, Vox Studios, 1 – 45 Durham Street, Vauxhall, London, SE11 5JH
www.wcl.org.uk

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