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The NFU represents 47,000 farm businesses in England and Wales. In addition we have 40,000 countryside members with an interest in farming and the country.

New basic rules for farmers to tackle diffuse water pollution from agriculture in England

NFU concerns and points of principle

- **The NFU believes that the implementation of the ‘basic rules’ is an inappropriate and inaccurate means of dealing with site specific issues;**
- **It should be clear how each of these measures will contribute to reducing diffuse pollution so that the impact of the measures is quantified.**
- **We feel the best way to support the environment is via a non-regulatory and advice led approach.**
- **The proposed catch-all regulatory approach takes no consideration of the intensity of farming activity and location; therefore, it is disproportionate and unjust. If a decision to implement the proposed rules is taken the NFU urges that Defra consider an exemption for low intensity holdings.**
- **The proposed rules shift the burden of proof for pollution away from the Environment Agency (EA) and onto the land manager. This is unfair and disproportionate. The land manager will have to prove pollution has not occurred rather than the EA proving it has. This will add significantly to the already large paperwork burden of time pressed farmers.**
- **Further to our concerns, the rules are seen as a move towards whole territory NVZ without the proper designation process and means of appeal as a consequence and may act as a precursor to future regulatory enhancement without an adequate evidence base. The rules disproportionately impact on the livestock and dairy sectors.**
- **We are also concerned that the introduction of basic measures may result in potential loss of state aid funding under RDPE for some capital items within Countryside Stewardship.**
- **The NFU supports the advice led approach outlined by Defra but the delivery has to be consistent for all.**
- **If a decision to implement the proposed rules is taken the NFU urges that Defra provides much more clarity and detail about the individual proposed rules as many are currently vague and could be misinterpreted by both land owner and regulator. Clarity of rules and understanding is essential for all concerned.**

The consultation asks for a response to the following eight 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? Yes/No? What are the key reasons for your view?*

2.21 We created a shortlist of possible regulatory actions grouped into two options based on these principles:

The voice of British farming

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- *Maximise the benefits and minimise any costs to farmers*
- *Maximise benefits for the economy as a whole*
- *Maximise reductions in diffuse pollution and benefits to the wider environment*
- *Focus on advice to introduce any new rules*
- *Clear and practical rules based on industry best practise*
- *Create a fairer system with a clear minimum standard for all*

The NFU cannot agree with the first three principles outlined by Defra. We strongly believe that principle three, “*Maximise reductions in diffuse pollution and benefits to the wider environment*” is contradictory to the premise in principle one of minimising “*any costs to farmers*” and subsequently principle two as well. Reduction in pollution cannot be achieved on a no cost basis as costs must be borne somewhere. Bearing the cost will have implications for the farming industry and subsequently the wider economy as a whole.

The NFU broadly agrees with the remaining principles set out in paragraph 2.21. As an agricultural trade organisation we endorse measures/principles which are known to benefit a farm business and potentially reduce costs thus enhancing business sustainability in the long term. Any increase in farm business sustainability can and should benefit the wider economy as a result. However, the NFU has concerns about the need for further regulation. We believe that basic rules are too much of a blanket tool for dealing with site specific issues and their contribution in reducing diffuse pollution is not clear. We feel the best way to support the environment is via a non-regulatory and advice led approach.

Instead, and our preferred approach would be for Defra to incentivise the industry to implement site specific voluntary measures which tackle identified problems through advice, land management schemes and capital grants. This incentivised approach should include a continuation of the Catchment Sensitive Farming initiative at existing levels, a simple and effective Countryside Stewardship scheme, water company catchment management schemes and NGO led catchment initiatives. Many farmers have a limited amount of time and many rural areas lack adequate broadband provision for a modern business making it difficult to keep up to date with regulatory changes and requirements. Therefore, any proactive initiative to engage and inform farmers is to be welcomed, especially if it focuses on the farming benefits of best practise which can result from some of the measures. This proactive approach is endorsed by many farmers, such as the example of Catchment Sensitive Farming, and will result in better understanding of what is required which will bring knock-on water quality benefits over time.

If Defra is to pursue the introduction of regulation the NFU would need to see more detail from the Environment Agency (EA) about their proposed regulatory approach before we are reassured that it is proportionate, fair and consistent for all. The NFU is keen to see improvements in the aquatic environment in England but it is important that improvements are cost-beneficial, do not come at any cost to the farming sector which cannot financially deliver this as well as producing high quality, competitively priced food in a challenging global market.

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?

As outlined in the response to Q1 the NFU does not believe that further regulation is required to tackle diffuse water pollution in England. As such we do not agree with adding any of the proposed rules to the existing regulatory framework, therefore, no ticks have been placed against any of the proposed rules in table 1 below. However, the NFU does acknowledge that the proposed rules do exhibit best practise and should be advocated to farm businesses as such but without the need for regulation.

Table 1: NFU response to Q2.

Proposed rule	Description	Agree/Disagree with rule in legislation (Y/N)	NFU comment on voluntary best practise
1	Locate field manure storage at least 10 metres from a watercourse	N	Common sense best practise which doesn't cost anything to do
2	Use a fertiliser recommendation system (e.g. RB209, PLANET etc.), taking into account soil reserves and organic manure supply	N	Common sense best practise for all land managers who apply manures and artificial fertilisers to maximise effective nutrient usage
3	Spread fertilisers and manure accurately, e.g. by using calibrated and maintained machinery	N	Common sense best practise for all land managers who apply manures and artificial fertilisers to maximise effective nutrient usage
4	Use a feed planning system to match nutrient content of diets to livestock feeding requirements	N	Common sense best practise for all livestock producers in order to match diet to livestock nutritional requirements
5	Livestock feeders must not be positioned within 10 metres of any surface water or a wetland	N	Common sense best practise which doesn't cost anything to do
6	Avoid severe poaching where likely to pollute a watercourse (compliance achieved if already meeting GAECs 4 & 5)	N	Common sense best practise which is already part of Cross Compliance
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)	N	Common sense best practise which is already part of Cross Compliance
8	Do not spread more than 30m ³ /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	N	Common sense best practise for all land managers who apply manures and artificial fertilisers to maximise effective nutrient usage
9	Do not spread manufactured fertiliser or manures at high-risk times or in high-risk areas	N	Common sense best practise for all land managers who apply manures and artificial fertilisers to maximise effective nutrient usage
10	Incorporate manures into soil as soon as possible and within 24 hours after application at the latest	N	Common sense best practise for non-grassland cropping and should be achieved whenever practical to do so
11	Exclude livestock from watercourses (excluding uplands and Common Land)	N	Can be advocated as voluntary best practise where practical to carry out and obvious beneficial outcomes for water quality can be identified and achieved

Q3. Do you have any comments on individual rules?

With reference to the comments already made in response to Q1 and Q2 here are additional comments on the individual proposed rules.

1. Locate field manure storage at least 10 metres from a watercourse.*
 - a) Comment to Defra on wording. The NVZ guidance published on 10th August 2015 says “field heap is at least 10 metres from any surface water”. For ease of understanding amongst farmers and regulators the same language and definition should be employed that is present in existing NVZ regulation e.g. use surface water for the basic rule rather than watercourse.

2. Use a fertiliser recommendation system (e.g. RB209, PLANET etc.), taking into account soil reserves and organic manure supply.
 - a) This measure will require an additional paperwork burden for farmers who do not currently actively use a nutrient management plan or employ a FACTS qualified advisor.
 - b) This paperwork burden will also incur an additional business cost for some farmers who are unable to carry this task out themselves and have to employ a FACTS qualified advisor.
 - c) Small, extensively managed grassland farms with no/low inputs of manure and fertiliser and who present a very small risk to the water environment will be unduly affected by this rule. The NFU would welcome scope for an exemption based on stocking density.

3. Spread fertilisers and manure accurately, e.g. by using calibrated and maintained machinery.
 - a) The NFU is concerned that implementation of this rule along with rule 1 is a means of trying to establish whole territory NVZ without a proper designation process which has the opportunity to be challenged via appeal.
 - b) The NFU is concerned with the additional cost and time burden this rule will place on small, low intensity livestock holdings.
 - c) The NFU does not believe that remote sensing is currently accurate, reliable and robust enough to verify this basic rule.

4. Use a feed planning system to match nutrient content to livestock feeding requirements.
 - a) The NFU has concerns that this measure will disproportionately impact livestock and dairy farmers who are not currently following a feed plan. Adopting and implementing a plan will add cost to a business as many farms will find it necessary to employ the services of a professional consultant. The businesses affected by this will be, more often than not, the ones least able to afford the additional cost.
 - b) NFU members have raised concerns about possible unintended animal welfare issues of a rule that is designed to limit animal nutrient input and does not fully take into account what the animal needs to be healthy.
 - c) The NFU has concerns over how this rule will be verified. The consultation document suggests verification may be part of other inspections. The NFU queries which inspections these would be and requires re-assurances from Defra as to the mechanisms which may be used.

5. Livestock feeders must not be positioned within 10 metres of any surface water or wetland.
 - a) The NFU urges Defra to be clear on definitions and wording used in rules. Surface water and wetland have been used here together. What is the Defra/EA definition of a wetland for farmer clarification? Wording must be clear to aid understanding and compliance.
 - b) NFU members have raised concerns about the practicality of this rule in some geographical locations in England. For example, this rule has the unintended consequence of severely restricting or preventing fenland areas in the east and south-west of England from being grazed. In these wetland landscapes it may be impossible to provide supplementary feeding when needed due to the proximity of water. If the rule were to be adopted the NFU urges the regulator to adopt a pragmatic approach which takes account of varying geographical locations.

6. Avoid severe poaching where likely to pollute a watercourse.
 - a) The NFU has no comment on this rule as it is already part of cross compliance and is good practise.

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.
 - a) The NFU has no specific comment about the rule on this rule as it is already part of cross compliance.
 - b) The NFU does however have concerns about the need for farmers justify and record the actions they have taken in order to provide evidence of what they have done to the regulator. This will add to the paperwork burden of the business

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.
 - a) The NFU has concerns about the introduction of this rule due to the potential high cost implications for some sectors of the industry. This rule would impact disproportionately on dairy farmers who simply do not have the required stability in their market to make large capital investments in slurry storage which does not help business sustainability in the short term.
 - b) The NFU is concerned that implementation of this rule along with rule 1 and 3 is a means of trying to establish whole territory NVZ without a proper designation process which has the opportunity to be challenged via appeal.
 - c) The NFU is concerned that the rule enforces farming by calendar and takes little consideration of time appropriate conditions that may occur during the proposed period.
 - d) The NFU would support the rule as best practise advice where possible and no more.

9. Do not spread manufactured fertiliser or manures at high risk times or in high risk areas.
 - a) See point 8a above as it is also relevant to this question.

- b) The NFU would endorse that all manures are, whenever possible, spread at the appropriate low risk time to make best use of the nutrients contained within them and that high risk areas are avoided.
- c) The NFU is concerned that implementation of this rule along with rule 1, 3 and 8 is a means of trying to establish whole territory NVZ without a proper designation process which has the opportunity to be challenged via appeal.
- d) The NFU would support the rule as best practise advice and no more.

Proposed good practise

10. Incorporate manures into soil as soon as possible and within 24 hours after application at the latest.

The NFU does not support this as a blanket rule for the following reasons;

- The rule is simply not practical to implement for many due to limitations on human resources, equipment and reliance on contractors.
- It is not appropriate for minimum or low tillage systems where soil inversion is avoided to improve soil structure.
- The rule is not practical for grassland farms with permanent pasture or rotational leys lasting longer than twelve months.
- Significant cost implications for livestock and dairy farmers if slurry and digestate has to be injected rather than surface applied.
- The NFU also has concerns about how this can be practically verified and enforced. Will the EA act pragmatically if weather conditions suddenly change which do not allow access to the land to incorporate?

11. Exclude livestock from watercourses (excluding uplands and Common Land).

The NFU would not support this as a blanket rule for the following reasons;

- Prohibitive cost of implementation.
- Disproportionate impact on the dairy and livestock sectors.
- Overall benefits to national water quality would be negligible, difficult to quantify and not justify the implementation cost.
- Potential increase in flood risk from debris gathering on fences or fences washing away and blocking structures.
- The rule would have the unintended consequence of facilitating the spread of invasive weeds such as Himalayan Balsam.
- Detrimental visual impact on the countryside by enclosing streams and rivers in visual prisons.
- The potential loss of state aid funding under RDPE for some capital items within Countryside Stewardship. This may also impact NGO led grant initiatives too.
- The feasibility and cost of implementing alternative drinking may be prohibitive in many pastures and could lead to animal welfare issues.
- Impact on Rural Land Registry mapping and possible loss of BPS payment as fenced off area may be deemed un-farmable.
- May lead to disputes over rented land over the responsibility for cost on implementation.

The NFU acknowledges the rule can bring benefits for the environment, and human health, on a site specific basis and can be advocated as best practise where practical to carry out and obvious beneficial outcomes for water quality can be identified and achieved.

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

The NFU welcomes any verification system or methodology which does not add any undue additional paperwork burden for businesses. The EA should make every effort to use existing verification inspections available to them, or through collaboration with the wider industry, for rules which cannot be checked via remote sensing. Earned recognition of what a business is already doing can help to minimise the number of inspection visits for farms which will be time and cost beneficial for both the farmer and the inspection body. However, it is important to note that wider industry inspection bodies are not used as a proxy regulator by the EA. It is important they remain independent in the eyes of the industry to maintain confidence.

The NFU has reservations about the use of remote sensing to validate some of the proposed rules in the future. It can only be fully adopted if the methodology is robust and fair to all. In addition if remote sensing is to be used as a tool at a broader scale to pinpoint high risk areas for monitoring it is important that information gathered goes through a ground-truthing exercise to ensure its accuracy.

Q5. Are there any additional rules or good practice which you feel should be added? Yes/No? If Yes please give details.

No, the NFU does not feel that any other additional rules or good practise rules should be added to the legislative framework at this time. The NFU, however, does endorse that farmers voluntarily strive to achieve best practise in their sector in order to meet the demands of an ever changing global market and an uncertain environmental future.

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?

3.7 The Environment Agency's risk based approach to regulation would be the basis for enforcement of the new rules. Where farmers did not comply with the rules, we propose to focus enforcement on priority catchments. This would normally be an advice-led approach at first. Farms remaining non-compliant could then expect to receive formal warnings and potentially a fine. Prosecution would generally follow in the case of the more serious offences where there had been a failure to respond to those warnings. This staged approach is designed to avoid placing a disproportionate burden on farm business.

If a decision to implement the proposed rules is taken the NFU would welcome the advice led approach advocated by Defra although much more information is needed to reassure the industry about how this may be used in implementation. Although the consultation document talks about rules being "supported by advice" it lacks the detail that we need to provide reassurance to the industry about exactly how the rules will be enforced.

The NFU has concerns about how consistent the advice delivered to farming businesses will be. The advice must be consistent in its message and quality of delivery and should not leave any farm business at a disadvantage over another and more open to possible sanctions from the EA. Defra and the EA must also make clear any proposed timetable for future enforcement of non-compliance in order for the industry to know where it stands and take appropriate

actions to come into compliance with any new regulations. Defra and the EA must give the industry sufficient time to come into compliance. This is essential for those businesses which need to do the most to become compliant. An adequate lead in time will give businesses the opportunity to familiarise with the regulations and hopefully minimise the costs incurred in becoming compliant.

Any enforcement of non-compliance should be in line with the risk/damage that an individual business has on the environment. The NFU broadly agrees with the regulation principles set out by the EA in their document 'Regulating for people, the environment and growth'.

The NFU still has concerns over enforcement as not enough evidence is presented in the consultation for us to be happy with how it will be pursued. The NFU wants clear, firm assurances from Defra about the enforcement process so that members clearly understand what is expected of them and what the consequences will be of any non-compliance.

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

Whilst the NFU believes that there is no need for further regulation, we would welcome any effort from Defra to make existing regulation relating to water quality and agriculture more accessible, clearer to understand and co-ordinated with other related regulations to improve understanding for our members and the wider industry as a whole.

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

If Defra take the decision to enact the proposed basic rules within legislation the NFU strongly urges both Defra and the EA to liaise closely with colleagues within the Scottish Government and the Scottish Environmental Protection Agency (SEPA) to learn lessons from the implementation of General Binding Rules (GBRs).

Feedback from the Scottish National Farmers Union (NFUS) into the implementation of GBRs by SEPA is generally positive. This has come about due to the supportive advisory approach that has been adopted by SEPA which has provided farmers and landowners with advice and encouragement to implement and comply with the rules. Crucially this has involved one to one farm visits after catchment walkovers have identified areas of concern.

Targeted one to one engagement is a key tool in improving farmer understanding of regulatory requirements and the risks of diffuse water pollution and should be utilised as widely as possible. We refer Defra to the Catchment Sensitive Farming [Phase 3 Evaluation Report](#) which provides evidence of the value of direct farmer engagement in mitigating diffuse water pollution from agriculture.