Farming rules for water

Questions and answers
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Definitions, reasoning and approach: New way of working, less prescriptive, advice led, outcome focused, risk based and reasonable precautions

1. How are the new farming rules for water a new way of working?

The farming rules for water are a new way of working with farmers (please note where you see ‘farmer’ this applies to land managers as well if they have custody or control of agricultural land):

- **The rules are less prescriptive**: Instead the rules require farmers themselves to manage the risks from their farm to water quality and to decide what actions to take to prevent pollution
- **Advice led**: The approach to regulation is advice led and collaborative
- **Outcome focussed**: The rules are outcome focussed with the primary aim to achieve environmental improvements
- **Risk based**: The rules require a farmer to assess the risk of his farming activities
- **Reasonable precautions**: Some rules allow farmers to make their own decisions about what actions they must take to mitigate against diffuse pollution
- **Farming rules for water apply to all farmers in England**
- **No additional record keeping is required** (although it makes good business sense and is required for other regulations).

2. How are the rules less prescriptive than other regulations or rules?

Many of the rules allow farmers to determine the **right actions** to take for their land to avoid pollution through lost nutrients and soil erosion.

- Farmers must decide which measures will work best for their land and to avoid water pollution.
- Farmers will use the knowledge of their land to decide when weather and soil conditions might mean a higher risk of pollution, and what actions need to be taken in response.
- It’s up to the farmers to decide on the right time and the right place to spread fertilisers, store manures and manage livestock, although there are some minimum separation distances to protect inland freshwaters and coastal waters.

3. What do you mean by ‘advice led approach to implementation’?

- The farming rules will be implemented in a collaborative way underpinned by enforcement that is proportionate and fair with the emphasis on working with farmers to achieve compliance. The Environment Agency will advise the farmer on how to comply with the new regulations and help farmers to understand them.
• The majority of offences are expected to be dealt with by issuing advice and if necessary through civil sanctions
• Prosecution is reserved for the most persistent offenders
• If a farmer is found to be causing pollution or there is a risk that pollution may occur then the Environment Agency will decide what enforcement action is appropriate.

4. How are the rules outcome focused, what does that mean in practice?

The aim is to have a positive environmental outcome that is good for business and does not cause diffuse pollution.

• Some of the rules leave it to the farmer to decide on the best actions for their business to achieve the positive environmental outcome and prevent diffuse pollution.
• Some of the rules are prescriptive in how land managers should apply minimum distances for applying manure from water to achieve the positive environmental outcome and prevent diffuse pollution.

What we are trying to avoid is poor farming practice that causes agricultural diffuse pollution through soil runoff and soil erosion.

5. In what way are the farming rules risk based?

The rules are risk based because they require the land manager to assess the risk of causing diffuse water pollution and to take reasonable precautions to prevent it. Land managers must assess pollution risks from poor weather, weather forecasts or soil conditions to determine what action, if any, they must take in order to mitigate against this risk.

6. What are reasonable precautions and are there any examples?

Reasonable precautions are the actions that a farmer can take to prevent diffuse water pollution and apply to the planning of the application of manures and fertilisers and to the prevention of significant soil erosion to inland freshwaters and coastal waters. Farmers can choose the actions they take to suit their farm business – the legislation is deliberately non-prescriptive in the actions a farmer may need to take.

The legislation includes a non-exhaustive list of examples of reasonable precautions, which can guide farmers, including:

- For applying organic manures and manufactured fertiliser:
  - Routinely checking spreading/precision equipment for leaks and correct calibration
  - Incorporating organic manure and manufactured fertiliser into the soil within 12 hours of, or as soon as possible after, the application to the land

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o And for soil management:
  ▪ Establishing crops early in the autumn months, and during dry conditions
  ▪ Planting headland rows and beds across the base of any sloping land
  ▪ Undersowing or sowing a cover crop to stabilise soil after harvest
  ▪ Removing compacted soil
  ▪ Establishing grass (buffer) strips in valleys, or along contours or slopes, or gateways

o In relation to livestock:
  ▪ Moving livestock regularly
  ▪ Erecting fencing around controlled waters
  ▪ Wintering livestock on well-drained, level fields

It would be an offence to not take any reasonable precautions.

**Why are we introducing these new rules?**

7. **What environmental benefits will the farming rules for water bring?**

The farming rules for water will contribute towards the goal of the 25 Year Environment Plan which is to ‘improve three quarters of our water bodies to their natural state’.

The rules are expected to improve water quality by reducing concentrations of nitrates, phosphorus, sediment and faecal indicator organisms, improving biodiversity and benefitting protected sites such as SSSIs and Natura 2000 sites.

The estimated percentage reduction in annual pollutant losses from agriculture as a result of the new rules are:

- phosphorus 4.6%
- FIOs 1.7%
- nitrous oxide 1.3%
- nitrogen 0.9%
- sediment 0.3%

8. **How do the farming rules help farmers to reduce diffuse water pollution?**

Diffuse pollution will be tackled by:

**Better fertiliser management**

- The aim is to avoid pollution from excess nutrients washed off the soil.
- The rules set a stepwise approach to applying fertilisers. They require farmers to plan each fertiliser or manure application (based on soil testing) to meet crop and soil needs.

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• When planning each fertiliser or manure application land managers need to assess any factors that might give rise to diffuse water pollution.

**Better risk management and reasonable precautions**

• Pollution will also be reduced as the rules require land managers to consider risk factors from cultivation and livestock management and to take reasonable precautions to prevent pollution from these activities.

9. **What’s in it for the farmer?**

• **Money** - The new rules could help farm businesses save money from better resource efficiency and improve resilience.

• **Business resilience** - Keeping soil and nutrients on the fields improves productivity, reduces costs and makes a business more resilient.

• **Protecting the farm environment** – protecting biodiversity and the essential resources of soil, water and air.

• **Knowing what’s best for their land** - Farmers and land managers will be able to use the knowledge of what is best for their land to reduce agricultural diffuse pollution.

• **Complying with a common baseline of environmental standards** - Many of the farming rules for water are currently in the Code of Good Agricultural Practice and farmers in a Nitrate Vulnerable Zone (NVZ) or in the Basic Payment Scheme should already meet many of the farming rules for water. **But farmers should still check to see that they also comply with all of the farming rules for water.**

10. **How will the farming rules save a farmer money?**

The farming rules for water aim to prevent diffuse water pollution by only applying the right amount of fertiliser to meet soil and crop needs. The rules also reinforce the message that organic manures are a valuable resource to improve soil productivity and crop yield, and can in turn reduce the amount of manufactured fertiliser required.

By doing this some farmers will make some resource efficiency savings from having to buy less manufactured fertiliser.

**Other contextual questions**

11. **Consultation**

Defra consulted on the proposed new rules in late 2015 (known as the ‘basic rules’) and most of the responses were positive. Responding to feedback the rules have been made less prescriptive, more outcome focused and require no record keeping (although it makes good business sense and is required for other regulations).
12. Why are you bringing in new regulations when most farmers already do these things?

It is important to create a level playing field in which all farmers protect the environment to the same basic standard. Many farms already operate to this standard so it would be unfair to pay others to do this when most have done so voluntarily.

Diffuse water pollution from farming is a widespread issue with many farms allowing small amounts of pollution that together have a significant impact on water quality.

Voluntary approaches have been unable to influence some farmers to meet a good practice standard. So the farming rules for water aim to bring all farmers up to the same basic good practice.

13. Why are the farming rules not part of cross compliance rules for the Basic Payment Scheme?

Keeping the farming rules for water separate from cross compliance means that the farming rules for water:

- Can be less prescriptive, more outcome focused and implemented through an advice led approach.
- Don’t require farmers to keep paperwork (though it does make good business sense and is required for other regulations).
- Allows for enforcement by the Environment Agency to be risk based and proportionate. It also matches their wider regulatory role on water quality and provides greater flexibility with the way that the Environment Agency can work with farmers.
- Applies to all farmers not just those claiming BPS payments, as diffuse water pollution is a widespread issue and so all farmers need to meet the standard.

14. Why are farming rules for water needed given Brexit?

- The government’s 25 Year Environment Plan commits us to improving three quarters of our water bodies to their near natural state, so the farming rules will also help contribute to this goal.
- The new farming rules set a minimum standard of good practice for all farmers and are cost beneficial for farming as a whole.
- Farmers need to compete on a level playing field to ensure a fair, competitive and sustainable farming industry whilst improving the environment.
- The rules also help us to comply with the Water Framework Directive by which we are bound while we remain a member of the European Union.

On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until we leave the EU, the UK remains a full member.
of the European Union and all the rights and obligations of EU membership remain in force. During this period, the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

Do I already comply?

15. Will farmers complying with cross compliance rules need to do anything more to comply with the farming rules for water?

- Farmers should review their farm practice and satisfy themselves that they comply with the farming rules for water in full.
- The new farming rules are aligned with Basic Payment Scheme cross compliance rules to simplify the requirements for farmers already familiar with these rules.
- Farmers already meeting GAEC 4 (minimum soil cover) and GAEC 5 (minimise soil erosion) rules should comply with the soils aspects of the new farming rules.

How will the rules be enforced?

16. How will the rules be enforced?

The Environment Agency is responsible for enforcing the regulations underpinning farming rules for water. The farming rules for water introduce a new collaborative approach to ensure that all farmers in England meet a basic standard of good practice, underpinned by new legal requirements. The emphasis will be advising farmers what they must do to meet the standard before any enforcement action is considered.

The Environment Agency can use both civil and criminal sanctions in a manner that is appropriate to any offences under the farming rules, as described in their Enforcement and Sanctions Guidance. There are a broad range of enforcement and sanctions available to address non-compliance and the following could be applied:

- Civil sanctions such as compliance notices; restoration notices; stop notices; fixed monetary penalties; variable monetary penalties, the acceptance of enforcement undertakings as well as warning letter or formal cautions.
- They may also pursue a criminal prosecution, but this is only likely for more persistent cases of non-compliance with the rules.


17. How will compliance with the rules be inspected?

The Environment Agency may visit a farm for a number of reasons, including a planned inspection, or in response to a reported pollution incident.

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The rules

RULE 1 - You must plan each application of organic manure or manufactured fertiliser to cultivated agricultural land to meet soil and crop needs and take into account the results of soil test. Soil testing for Phosphorus, Potassium, Magnesium and pH and an assessment of Nitrogen must be no more than 5 years at the time of the application. You must consider factors that might give rise to diffuse water pollution and take reasonable precautions to prevent this.

18. How is soil testing being introduced?

To be able to plan your application of manures and fertilisers effectively you must test your take account of soil tests. Your soil test must be no more than 5 years old at the time you apply organic manures or manufactured fertilisers to agricultural land.

19. Which soil nutrients need to be tested?

The analysis must include the pH of the soil and the levels of N, P, K and Mg (Nitrogen, Phosphorus, Potassium and Magnesium) on cultivated land. Nitrogen levels can be assessed by Soil Nitrogen Supply tables, e.g. in RB209. The analysis must be no more than 5 years old at the time of the application.

This will be the legal minimum, although farmers may need to do more in practice depending on the crops being grown and soil on their land. For example, annual testing or reference for soil nitrogen levels is common good practice.

20. Does soil testing apply to everyone who grows crops, no matter how much?

Soil sampling, as part of fertiliser planning, applies to all cultivated land. The definition of cultivated land is given under point 20.

21. Is there a minimum field or parcel size for carrying out a soil test for nutrient planning?

There is no minimum size as any field capable of being cultivated through physical or chemical means is capable of receiving and losing nutrients if applied inappropriately.

22. What counts as cultivated land?

Cultivated land for the purpose of the farming rules for water is defined as land which has been cultivated:--

(a) by physical means (including ploughing, sowing or harvesting) at least once in the previous year, or

(b) by chemical means (including the application of organic manure or manufactured fertiliser) at least once in the previous 3 years.

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23. **What factors might give rise to diffuse water pollution from fertiliser or manure applications?**

This is a non-exhaustive list, but factors include:

- weather conditions and forecasts for that land at the time of application
- the slope of the land, in particular if greater than 12 degrees
- any ground cover
- proximity of the land to inland freshwaters, coastal waters, wetlands, or to a spring, well or borehole
- the soil type and condition of the land
- the presence and condition of any agricultural land drains.

24. **What reasonable precautions should I take to prevent diffuse water pollution from fertiliser or manure applications?**

This is a non-exhaustive list, but reasonable precautions include:

- checking spreading equipment for leaks and correct calibration
- incorporating organic manure and manufactured fertiliser into the soil within 12 hours of, or as soon as possible after, its application
RULE 2. You must not store organic manures on land:

(a) within 10 metres of inland freshwaters or coastal waters

(b) within 50 metres of a spring, well or borehole

You must take into account factors that might give rise to diffuse water pollution when deciding where to store organic manures.

25. What is the definition of ‘waterlogged’?

There is no definition of ‘waterlogged’ in the legislation, but the Environment Agency would advise that farmers should not spread where the soil is waterlogged at the surface, and there is a risk of water pollution from saturated overland flow.

26. What does organic manure include?

Organic manure means fertiliser that is derived from one or more animal, plant or human sources.

This includes, but is not limited to:

- anaerobic digestates and liquors
- ash from meat, poultry litter or biomass
- bone meal
- livestock manure
- paper crumble
- silage effluent
- sludge
- slurry

Any application of biodegradable material does fall under the jurisdiction of farming rules for water, under this definition of organic manure.

27. Which factors might give rise to diffuse water pollution from storing organic manure?

This is a non-exhaustive list, but factors include:

- weather conditions and forecasts for that land at the time of application
- the slope of the land, in particular if greater than 12 degrees
- any ground cover
- proximity of the land to inland freshwaters, coastal waters, wetlands, or to a spring, well or borehole
- the soil type and condition of the land
- the presence and condition of any agricultural land drains

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28. Does this apply to equestrian businesses and horse manure heaps?

The farming rules for water do not apply to equestrian businesses but do apply to horses kept on farms. This is because the number of horses is a small fraction of the number of livestock kept on farms. We will however review the rules after three years.
RULE 3. You must not apply organic manures or manufactured fertilisers:

a) if the soil is water logged, flooded, or snow covered

b) if the soil has been frozen for more than 12 hours in the previous 24 hours

RULE 4. You must not apply organic manures:

a) within 10 metres of inland freshwaters or coastal waters (see exception)

b) within 50 metres of a spring, well or borehole.

27. What is the exception to not applying manures within 10 metres of inland freshwaters or coastal waters?

You must ensure that organic manure is not applied within 10 metres of inland freshwaters or coastal waters unless:

(i) you apply organic manure using precision spreading equipment, in which case the minimum spreading distance is 6 metres, or

(ii) you are applying livestock manure (other than slurry or poultry manure) to land that is managed for breeding wader birds or as species-rich semi-natural grassland, and the land is subject to an agri-environment commitment or has been notified as a Site of Special Scientific Interest under the Wildlife and Countryside Act 1981. The manure must be applied between 1 June and 31 October inclusive and must not be applied directly onto the surface of the inland freshwater or coastal water. The total annual amount of manure applied must not exceed 12.5 tonnes per hectare.

29. What does precision spreading equipment mean?

Precision spreading equipment includes: a trailing hose spreader or a trailing shoe spreader; a shallow injector which injects organic manure no deeper than 10 centimetres below the surface; and a dribble bar applicator.
RULE 5. You must not apply manufactured fertiliser within 2 metres of inland freshwaters, coastal waters, or of a spring well or borehole.

RULE 6. You must take reasonable precautions to prevent significant soil erosion and runoff that could enter inland freshwaters or coastal waters especially from:

a) creating farm tracks or gateways; establishing seedbeds, polytunnels or tramlines; cleaning out ditches; installing drainage or irrigation; and irrigating crops or spraying them with pesticides, herbicides or fungicides.

b) poaching by livestock

30. How is soil erosion defined?

Soil erosion means soil loss caused by:

- soil runoff or degradation over a single area of agricultural land (whether or not crossing permanent boundary features) of at least 1 hectare
- or poaching adjacent to inland freshwaters or coastal waters over a single stretch of agricultural land (whether or not crossing permanent boundary features) which is at least 2 metres wide and 20 metres long.

31. What does soil runoff mean?

Soil runoff means the transportation of agricultural pollutants into inland freshwaters or coastal waters, or into a spring, well or borehole, by rainwater or other water running over the soil surface.

32. What does poaching mean?

Poaching means the trampling or treading of agricultural land by livestock resulting in a layer of compacted soil with overlying mud.

33. What land management and cultivation practices might give rise to diffuse water pollution?

This is an non-exhaustive list, but factors include:

- creating farm tracks on, or gateways to, the land
- establishing seedbeds, polytunnels or tramlines
- cleaning out ditches
- installing drainage or irrigation
- irrigating crops of spraying them with pesticides, herbicides or fungicides

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34. What reasonable precautions should I take to prevent diffuse water pollution from soil management and managing livestock?

This is a non-exhaustive list, but reasonable precautions for managing soils include:

- establishing crops early in autumn months, and during dry conditions
- planting headland rows and beds across the base of any sloping land
- undersowing or sowing a cover crop to stabilise the soil after harvest
- breaking up compacted soil
- establishing grass buffer strips in valleys, along contours or slopes, field edges or gateways.

For managing livestock reasonable precautions include:

- moving livestock regularly
- erecting fencing around inland freshwaters or coastal waters
- and wintering livestock on well-drained, level fields.
RULE 7. You must protect any land within 5 metres of inland freshwaters or coastal waters from significant soil erosion by preventing poaching by livestock.

35. What is the definition of significant soil erosion?

The farming rules require farmers to protect all land within 5 metres of inland freshwaters or coastal waters from soil erosion, specifically by preventing poaching from livestock. The regulations define significant soil erosion as that which is at least 2 metres wide and 20 metres long.

36. Do farmers have to prevent poaching by erecting fencing along watercourses?

Erecting fencing to prevent poaching by livestock along a watercourse is one option to prevent poaching by livestock, but is not a mandatory requirement of the regulations. Other options might include removing livestock from the land or providing alternative drinking sources for livestock.

However, if a land manager considers that there is a risk of poaching and they decide to take the reasonable precaution of erecting fencing, then the length of fencing should be sufficient to prevent poaching/soil erosion. This will depend on local circumstances and the farmer’s assessment of risk.
RULE 8. You must not position livestock feeders:

\[ a) \text{ within 10 metres of inland freshwaters or coastal waters,} \]
\[ b) \text{ within 50 metres of a spring, well or borehole} \]
\[ c) \text{ where there is significant risk of agricultural diffuse pollution from poaching around the feeder entering any inland freshwaters or coastal waters} \]

37. Do livestock drinking troughs and drinkers need to be positioned more than 10m from a watercourse, as well as feeders?

The farming rules do not require livestock drinking troughs and drinkers to be located 10m from a watercourse or 50m from a spring well or borehole. However, it is good practice to site these containers a similar distance from such water resources to minimise the risk of pollution from poaching or soil erosion.

38. What reasonable precautions might I take to avoid agricultural diffuse pollution from livestock and soil management?

See question 32.

39. The farming rules are intended to prevent a ‘significant risk of agricultural diffuse pollution’. What is the definition of this term?

The term “significant risk of agricultural diffuse pollution” is designed to cover circumstances where there is a strong likelihood that diffuse pollution will occur from agricultural sources, whereby pollutants (such as nutrients and soil) enter nearby surface waters or groundwater through soil erosion or run-off. The Regulations contain a (non-exhaustive) list of factors which land managers must take into account, which (if present) may indicate a significant risk of agricultural diffuse pollution. This approach is intended to work with farmers’ own knowledge of the individual characteristics of their land to reduce and prevent diffuse pollution.

Farmers will have to plan each application of organic manure or manufactured fertiliser they make to their land, to ensure that the application doesn’t exceed soil or crop needs or give rise to a significant risk of agricultural diffuse pollution. Farmers must also take into account any significant risk of agricultural diffuse pollution when deciding where to store organic manure and locate livestock feeders.
Impacts on agriculture

40. Are the rules cost beneficial to farmers?

As well as reducing water pollution from excess nutrients, the rules give farmers an opportunity to save money through better resource efficiency. By using the results of soil testing to match fertiliser applications to soil and crop needs, fertiliser costs can be reduced.

41. Won’t the farming rules for water impose high slurry storage costs on some dairy farmers at a time when some are under significant financial pressure?

The farming rules put the onus on the farmer to decide what they need to do to comply. Farmers can manage any excess slurry by storage or moving to an external store off farm. For those farmers relying on storage they will need sufficient capacity for periods when slurry cannot be spread to land, typically at least 5 months storage is required for cattle, which matches requirements in Nitrate Vulnerable Zones. So this may require an increase in storage capacity for some.

42. The consultation suggested that remote sensing would be used to check compliance with the rules, might this undermine my privacy?

We are looking for opportunities to be more efficient in how we assess compliance. By reducing farm inspections farmers save time and money. We are looking at a range of options including remote sensing but this is not yet sufficiently developed to replace on the ground inspections. Instead we will explore using remote sensing (satellite or aircraft imagery) to identify broad scale pollution risks in order to target further inspection on the ground. The EA will make best use of available data and technology to build upon and improve their risk based targeting.

43. How do the rules affect funding under other schemes such as Water Environment Grant, Countryside Stewardship and Catchment Sensitive Farming?

The schemes listed currently fund interventions on farm such as fencing, relocation of feeding troughs and soil sampling.

We can confirm that all current activity funded through these, or similar programmes can continue.
Further information

44. Where can I get further information?

Defra projects

There are four Defra projects under which farmers can get advice and support that will help them address pollution and adjust to the new rules.

Catchment Sensitive Farming

Under Catchment Sensitive Farming (CSF), Defra, Natural England and the Environment Agency offer farmers in priority areas across England free advice from CSF Officers, as well as support for Countryside Stewardship grants - to help them implement improvements in farming practices and infrastructure. CSF has led to significant improvements in water quality and ecology as well as farm business benefits. CSF farm advice includes nutrient management and soil husbandry to reduce water pollution from agriculture in priority areas for water quality.

Catchment Based Approach

Under the Catchment Based Approach (CaBA), catchment partnerships covering the whole of England develop and deliver catchment plans to improve the water environment for the benefit of people and wildlife. The 100+ Catchment Partnerships have a proven record of providing support and guidance to farmers helping them establish more sustainable and resource efficient practices and yielding improvements to soil, water and air quality. More resilient farm businesses also result. The CaBA Partnerships will be able to advise farmers in light of the new farming rules for water and on opportunities to realise both environmental and farm business benefits.

Farming Advice Service

The Farming Advice Service (FAS) is a service funded by Defra to help farmers understand and meet the requirements of Cross Compliance, Greening (the Basic Payments Scheme) and the European Directives on both water protection and sustainable pesticide use.

Water Environment Grant

Defra, the Environment Agency, Natural England and the Rural Payments Agency have launched a new scheme under the Rural Development Programme for England (RDPE) called the Water Environment Grant (WEG) to fund improvements to the water environment. The scheme was open to applications until 11 May 2018 with grants issued during summer 2018.

The scheme is aimed at a wide range of potential projects that demonstrate they meet Water Framework Directive objectives as set out in river basin management plans, including those for water dependant protected sites. For example, river restoration and in-river barrier removal through to advice for landowners and control of invasive species and support for feasibility studies.

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Industry led initiatives

There are several industry-led initiatives, which offer advice and guidance:

FACTS Registers of Professionally Qualified Advisers – FACTS

The Register of Professionally Qualified Advisors – FACTS are qualified advisors throughout the UK who help to maintain the standard of excellence in farm management and advice.

Campaign for the Farmed Environment (CFE)

- Campaign for the Farmed Environment helps farming businesses, by signposting to best practice in soil management, crop nutrition and pesticide use.
- CFE helps farmers support the natural environment, whilst farming productively.
- CFE gives farmers the opportunity to demonstrate their ‘green credentials’ to the rest of the industry and the general public
- CFE is a partnership approach, supported by organisations engaged in agriculture and the environment and voluntary industry-led initiatives.

Tried and Tested

Tried & Tested is an initiative of the agricultural industry with support from Catchment Sensitive Farming (CSF). They aim to help farmers to improve nutrient management planning through a toolkit.

Nutrient Management Guide (RB209)

Agriculture and Horticulture Development Board

The Nutrient Management Guide (RB209) provides guidelines for crop nutrient requirements and the nutrient content of organic materials. It is published as seven sections:

- Section 1 Principles of nutrient management and fertiliser use
- Section 2 Organic materials
- Section 3 Grass and forage crops
- Section 4 Arable crops
- Section 5 Potatoes
- Section 6 Vegetables and bulbs
- Section 7 Fruit, vines and hops

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