



Before you complete this form, please read the Justice Impact Test Guidance, and ensure that the content has been discussed with your analytical, finance and legal departments. It is available at: https://www.justice.gov.uk/legislation/justice-impact-test

Please answer as many questions as possible on this form before you contact the Ministry of Justice (MoJ). If exact figures are not yet known, please provide your best estimates. When submitting this form, allow at least 20 working days for a response. If there are considered to be no impacts arising from your proposals, MoJ will agree this with you and no further correspondence will be required. However, if MoJ identifies a potential impact, you will be contacted to discuss and agree an estimate of costs including funding arrangements for the additional costs. In both cases, the outcome must be included in the Impact Assessment accompanying your final proposals.

Please forward the completed questionnaire, with any Impact Assessment, to MoJ's Corporate Finance Team at: justiceimpact@justice.gsi.gov.uk.

1. Your contact details

Name: Jan Kiernan
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By when would you like a response?: 7 April 2017

Is this proposal marked 'Official - Sensitive'? [ ] Yes [ ] No

2. General information

Please provide contact details of your lead analyst for the cost appraisal, and the Ministry of Justice policy/operational lead if known.

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In brief, what is your proposal? (no more than half a page please)

To introduce a small set of new basic statutory rules for all farmers to help tackle diffuse water pollution from agriculture. The rules will set a clear baseline for consistent agricultural land management across England. The rules will put existing good practice onto a statutory basis. A consistent approach at farm level will help tackle and prevent the cumulative effects of diffuse pollution from agriculture at catchment levels and wider river basin areas.
Failure to comply with the rules will be an offence. The Environment Agency (the regulator) would take a proportionate approach to enforcement, starting with advice and then, where appropriate, imposing civil sanctions. Criminal proceedings would only be pursued for serious pollution offences.

Please specify the/any relevant legislation/Bill

The new rules will transpose Article 11.3(h) of the Water Framework Directive into domestic legislation.

Please advise when the changes are expected to be introduced, and when MoJ are likely to be impacted.

Legislation is intended to come into force from 1 October 2017. Enforcement is expected to be predominantly through an advice-led approach, with civil sanctions being imposed where appropriate. It is anticipated that prosecution would only occur where these enforcement actions have been exhausted. Therefore, we estimate that prosecutions might start 2 to 3 years after the regulations come into force.

If introducing a new offence, sanction or penalty, which of the following groups will the proposal affect? (Tick all that apply)

- Individuals
- Private Institutions (e.g. Businesses)
- Public Institutions (e.g. Government Departments)

What is your proposal intended to achieve, and in what timescale?

Agriculture is now the industry sector causing most water pollution. This places a significant external cost to other parties such as water companies, recreational users of watercourses and members of the public. This is a market failure; in a free market there are limited incentives for farming businesses to adopt practices which would reduce water pollution. Government intervention is necessary to correct this market failure. There is evidence of widespread agricultural diffuse pollution from phosphorus, nitrogen, sediment, other nutrients, pesticides and faecal matter but no mandatory controls in place to tackle it. The new rules will address this in a way that minimises costs to the farming sector by focusing on resource efficiency in relation to nutrient and soil management. The rules will set a clear basic level of good practice for consistent agricultural land management across England and will contribute to improving the water quality of lakes, rivers streams and groundwater over time. The Environment Agency will be the regulator.

The rules will help us to meet our objectives under the Water Framework Directive and are an opportunity to adopt a more outcome focused approach to improving water quality. This new method for engaging farmers might be adopted as a model for other farm regulations. The rules empower the farmer to make a risk-based assessment to determine actions that minimise pollution risk. They complement the range of incentives, advice and voluntary measures which make up the package of measures to tackle water pollution from agriculture.

Which geographical area/s will this proposal affect? (Tick all that apply)

- England
- Wales
- Scotland
- Northern Ireland
- Other (Please Specify)

Regulations would be for England only as environmental protection is a devolved matter. Scotland, Wales and Northern Ireland have their own regimes.

What public commitments have been given, when were they made, and to whom? If not, are any commitments expected to be made prior to publishing an impact assessment?

A public consultation on the proposed rules was held in October to November 2015, which set out the Government's intention to introduce new rules. A written ministerial statement will be made in Spring 2017 and a policy paper setting out what will be taken forward, together with the summary of responses to the consultation will be published.

What are the options under consideration and how does this change what happens now?

See attached Impact Assessment. The rules would address a small gap in the legal framework, establishing a basic standard of good practice for all farmers.

If you are creating a new civil sanction or penalty which court or tribunal, in your opinion, should deal with it?

Magistrates Court and First-tier Tribunal for appeals against civil sanctions

Who will be affected? What is the anticipated volume/number of cases per year?

Farmers (commercial agricultural businesses). Enforcement will be in line with the Environment Agency's Enforcement and Sanctions Guidance, and will be through an advice-led approach supported by civil sanctions and criminal prosecution. We estimate that cases being taken through to prosecution will be between 0 - 10 per year (likely 2 to 3 years after regulations come into force) and will continue at that very low level. The majority of offences are expected to be dealt with by issuing advice to those in breach and, where appropriate, by imposing civil sanctions and administrative penalties or accepting enforcement undertakings.

It would normally be cases of persistent failure or severe pollution and environmental impact which would result in criminal proceedings being brought. The Environment Agency would use the enforcement powers given to them under basic rules to tackle local pollution and encourage changes in farmers' behaviour to adopt good practice routinely, since the objective of the rules is to prevent diffuse pollution from agricultural sources polluting controlled waters (inland freshwaters and coast waters). In the worst cases, the Environment Agency would also consider whether an offence had also been committed under the Environmental Permitting Regulations 2016 (EPR) and what the appropriate enforcement response should be to that (having regard to the Enforcement and Sanctions guidance) in addition to any basic rules pollution prevention offences.

### 3. Criminal Offences and Civil Penalties and Sanctions

Which of the following are you creating/amending? (Tick all that apply)

- Civil Sanctions
- Fixed Penalties
- Civil Orders
- Criminal Sanctions
- Criminal Offences
- Other (Please Specify)

The combined approach of civil and criminal sanctions are intended to be in line with existing water and agriculture regulations to prevent environmental pollution – namely the Environmental Permitting Regulations 2016 and the Nitrates Regulations 2015. A person guilty of an offence could be subject to a civil sanction and/or, in the most serious offences, be liable on conviction to a fine. The civil sanctions available to the Environment Agency would comprise: fixed monetary penalties; variable monetary penalties; restoration notices; compliance notices; stop notices and enforcement undertakings. The regulator would be expected to choose the most suitable sanction for a particular offence, taking into consideration the circumstances relating to it.

If you are creating a criminal offence, is it:

- Summary Only
- Triable Either Way
- Indictable Only

What proportion of offenders will be tried in the Crown Court and what proportion will be tried in the Magistrates' Court?

Majority of cases would be dealt with in the Magistrates' Court (>85%) with the remainder in the Crown Court. (This estimate is based on the proportion of water pollution cases that have been heard in Magistrates' courts over the past 5 years, 2011 – 2016.)

Please state the maximum associated fine and/or custodial penalties. In the case of offences involving penalties of a fine and custody or both, then please indicate the likelihood of receiving a custodial sentence upon conviction.

Unlimited fines in line with Court sentencing guidelines for other environmental water pollution offences, ie assessed according to the severity of the pollution caused.

Please provide details of the relevant legislation (where appropriate) and confirm whether the creation or amendment of criminal offences and penalties has been agreed with the MoJ Criminal Offences Gateway team.

The proposal is to establish new regulations under Pollution, Prevention and Control Act 1999. The rules would be updating transposition of the Water Framework Directive, and would contribute to addressing an infraction risk. The Reducing Regulation Committee gave approval for consultation in September 2015, and approval for the new rules in March 2017

#### 4. HM Courts & Tribunals Service

##### Estimating the change to caseload of the Courts and Tribunals Service

Do you expect there to be a change in Court or Tribunals process or an increase/decrease in applications/cases to HM Courts and Tribunals Service through the creation or amendment of this law? Please provide an estimate of the change to volumes of cases going through the court system as a whole, explain any changes in process and outline the evidence and sources that support these estimates.

No change in court process. Minimal increase in applications 2 to 3 years after rules come into force.

##### Appeal Rights

Does your proposal create a new right of appeal or expand an existing jurisdiction in the Unified Tribunals System or route to judicial review? If so, how do you expect these to be handled (i.e. administered by HM Courts & Tribunals Service)?

We would expect to expand an existing tribunal jurisdiction for environmental pollution offences (Nitrates Pollution Prevention Regulations 2015 (as amended)) where a civil sanctions regime already exists. Administration of appeals would be through HM Courts and Tribunals Service, for the First-tier Tribunal of the General Regulatory Chamber.

Do you expect to establish a new tribunal jurisdiction? If so, has this been discussed with the Ministry of Justice?

No.

##### Alternative Dispute Resolution

Has the use of alternative dispute resolution (ADR) procedures (including mediation) been considered? If not, why not?

No, cases will only be brought forward on evidence of pollution from the Environment Agency the regulator (the EA).

## Prosecution and Enforcement

If the proposal is to add a new offence, will the Crown Prosecution Service act to prosecute defendants? If not, please state who will do so.

No. The Environment Agency undertake prosecutions.

Will the proposal require enforcement mechanisms for civil debts, civil sanctions or criminal penalties? If yes, who do you expect to enforce these?

Yes. The Courts Service for civil debts and criminal penalties.

## HMCTS Procedural Rules, Sentencing and Penalty Guidelines

Do you anticipate that Court and/or Tribunal procedural rules will have to be amended? If so, when is the likely date for the changes?

No

Will the proposals require sentencing and/or penalty guidelines to be amended?

No

## 5. Legal Aid

Once implemented, is your proposal likely to require individuals to seek legal advice and to apply for legal aid in any of the following areas? In each case (including "no impact"), please provide supporting evidence.

- Criminal
- Civil (including Family)
- Asylum
- No Legal Aid impact

Minimal impact

If legal aid may be affected, would legal aid costs increase or be reduced (and by what margin)?

Little or no change

## 6. Prisons and Offender Management Services

### Impact on HM Prison Services

Will the proposals result in an increase in the number of offenders being committed to custody (including on remand) or probation (and community sentences)? If so, please provide an estimate and reasoning behind it, an estimated timeframe to reach this number of sentences, what evidence this is based on, and its source.

No

Does the proposal create or edit an existing offence with a custodial or probationary sentence, or change the way offenders go through the prison/probation service? If so, please provide details, including the expected impact on probationary services.

No

## 7. Summary

Volumes and Costs (please lengthen if necessary).

<b>Who will be affected by this proposal in MoJ?</b> (details from information provided above)	<b>Volumes</b>	<b>Type</b> (e.g. prison place, tribunal hearing, fixed penalty, etc.)	<b>Estimated costs (£)</b>
Criminal Offences and Sanctions	Between 0 and 10 cases per year, taken to prosecution	Fines	
Civil Penalties		Fixed monetary penalty	
		Variable monetary penalty	
		Restoration notices	
		Compliance notices	
		Stop notices	
		Enforcement undertakings	
		Fines	
HM Courts & Tribunals Services	Between 0 and 10 cases per year, taken to prosecution		
Legal Aid			

Who will be affected by this proposal in MoJ? (details from information provided above)	Volumes	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated costs (£)

Prisons and Offender Management Services (lengthen if necessary, only complete if maximum penalty is something other than a fine)

Offence	Maximum Penalty	No. of prosecutions brought per annum	Likely proportion sentenced to immediate custody	Likely average custodial sentence length given	Estimated costs (£)

Please be aware that you may be required to meet any costs incurred by the MoJ as a result of any changes/additional work that is created by the introduction of this proposal.