

The report of the independent Farming Regulation Task Force

**Striking a balance:
reducing burdens; increasing
responsibility; earning recognition**

**A report on better regulation
in farming and food businesses**

May 2011

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Letter to Ministers

FARMING REGULATION TASK FORCE

Chair: Richard Macdonald

17 May 2011

Rt. Hon. James Paice MP, Minister of State for Agriculture and Food, Defra

Dear Minister,

We have pleasure in attaching for your consideration our independent report on better regulation in farming and food, which you commissioned in July 2010.

In writing this report we have undertaken an extensive consultation with the industry and other interested parties. We have also had a number of thoughts constantly in mind: food and farming businesses must be freed from unnecessary bureaucracy and enabled to be competitive and capable of increasing production; we mustn't compromise our environmental, food safety, animal and human welfare standards; and your expectation that we should be bold!

It is difficult and probably wrong to caricature Government thinking on regulation. However, if we did, it would be that successive administrations have been cautious, prescriptive, fearful of EU infraction, and possessive of implementation. As a result, in many instances we have become slaves to the process of regulation and lost sight of the outcomes we have been trying to achieve. We think we should be just the opposite. If we want economic and production growth in a way that achieves or preserves high standards, Government's role should be to set the strategic overview, but then minimise its involvement.

We should determine regulatory needs on the grounds of impact. We should determine regulatory interventions on the basis of risk and should pull industry into the whole process as partners with Government. We should recognise businesses who earn trust with lighter or no touch, and so encourage excellence. And by doing all this, we will take immense emotional and financial costs off the shoulders of business.

This report is in two parts: first (chapters 2–3), how we establish a new regulatory culture, primarily (but not solely), in Defra, its agencies and delivery partners; second (chapters 4–11), specific recommendations for change. Inevitably and understandably the latter will draw most attention, but without culture change, issues don't get dealt with.

The key strategic message from our report is that Defra and its agencies need to establish an entirely new approach to and culture of regulation; otherwise the frustration that we, farmers and food-processing businesses have felt will continue. The essence of this approach is about strengthening the partnership between Government and the farming and food-processing industries.

Government must trust industry, must involve it in the development of non-regulatory and regulatory solutions, and must set the framework for industry to take responsibility. Where regulation is used to resolve a problem, the department and its agencies must change the focus from process to outcomes – from the 'culture of tick-box regulation' to delivering real results. Government inspection and enforcement must become more efficient and more effective. The competent authority must remain key, but it must adopt a tighter, risk-based approach to

regulation. Critical to this is for Defra and its agencies to establish a system of ‘earned recognition’ that enables regulators to reward good practice with less frequent inspection.

Against this background, a large number of significant improvements can be made to individual regulatory frameworks. We draw your particular attention to our recommendations on three issues on which you asked for our advice at the start of our review because of the strong concerns that you knew farmers to have.

The livestock movements regime should be simplified in a way that reduces burdens without compromising the risk of animal disease spread. The paperwork burden involved in the ‘Nitrates Regulations’ should be reduced. Defra should then move towards a catchment-based approach for managing nutrients. Ideally, this would lead to an integration of the aims of the Nitrates Directive with those of the Water Framework Directive in a way that minimises burdens, avoids duplication and improves the chances of a better outcome. Cross-compliance and the Single Payment Scheme should be simplified in a way that ensures a focus on outcomes while making farmers’ lives easier.

We also draw your attention to several other key recommendations. These relate to the planning framework and legislation, water management, the regulation of waste and integrated pollution prevention and control, the pesticides regime, and meat hygiene inspections. But these are just headlines to a raft of improvements, short- and long-term, that can be made. In the time available, we have not been able to calculate costs and benefits, but we are sure that our recommendations offer big savings to business; and more streamlined and focused systems are inevitably of less cost to Government. We should also be clear that we have only looked at regulations that are unique to food and farming. Broader issues such as employment rules that are just as constraining for farmers have been left to others to resolve!

By commissioning the Task Force on Farming Regulation, Defra has put itself at the vanguard of the Government’s better regulation drive. If you accept our recommendations, you will give the department, its agencies and delivery partners an agenda for change. We strongly commend that Defra be allowed to focus on leading implementation, rather than getting bogged down in a Whitehall exercise on principles when there is a clear better regulation agenda for the Department to implement.

In signing off, we recognise that implementing this report will not be straightforward. You asked us to be bold; now we ask the same of the Government. Many of our 200 or so recommendations are challenging. But we believe they are all credible. Some can be done immediately; many require renegotiation with the EU, which we accept will not be easy. So our recommendations are a mix of the shorter-term achievable and a longer-term agenda. If the Government accepts most if not all of them, we are confident it will re-set the way that it, farming and food businesses interact, and for the better. If not, nothing much will change. We commend this report to you.

Yours faithfully

Judith Donovan

Richard Percy

William Goodwin

Marion Regan

John Healey

Andy Robertson

Heather Jenkins

Stephen Tapper

Richard Macdonald (chair)

Executive Summary

“The key strategic message from our report is that Defra, its agencies and delivery partners need to establish an entirely new approach to and culture of regulation; otherwise the frustration that we, farmers and food-processing businesses have felt will continue. The essence of this approach is about strengthening the partnership between Government and the farming and food-processing industries.

Government must trust industry, must involve it in the development of non-regulatory and regulatory solutions, and must set the framework for industry to take responsibility. Where regulation is used to resolve a problem, the Department, its agencies and delivery partners must change the focus from process to outcomes; from the ‘culture of tick-box regulation’ to delivering real results. Government inspection and enforcement must become more efficient and more effective. The competent authority remains key, but it must adopt a tighter, tauter, risk-based approach to regulation. Critical to this is for Defra, its agencies and delivery partners to establish a system of ‘earned recognition’ that enables regulators to reward good practice with less frequent inspection.

Against this background, a large number of significant improvements can be made to individual regulatory frameworks. We draw particular attention to recommendations on three issues on which Ministers asked for our advice at the start of our review because of strong concerns from farmers.

The livestock movements regime should be simplified in a way that reduces burdens without compromising the risk of animal disease spread. The paperwork burden involved in the ‘Nitrates Regulations’ should be reduced. Defra should then move towards a catchment-based approach for managing nutrients. Ideally, this would lead to integration of the aims of the Nitrates Directive with those of the Water Framework Directive in a way that minimises burdens, avoids duplication and improves the chances of a better outcome. Cross-compliance and the Single Payment Scheme should be simplified in a way that ensures a focus on outcomes while making farmers’ lives easier.

We draw attention to several other key recommendations. Planning regulations must be improved to allow farm businesses to adapt, innovate and grow, including through the forthcoming National Planning Policy Framework and improvements to the permitted development and prior notification procedures, as well as the General Permitted Development Order. The forthcoming Water White Paper offers Government the opportunity to say how water can be better managed as a resource for agriculture. The regulation of waste and integrated pollution prevention and control (IPPC) must be streamlined, through tailoring environmental permitting forms and guidance, applying a general licence to waste, introducing a three-tier approach to waste regulations and exemptions, and reducing IPPC inspections and ensuring objective application processes.

The pesticides regulatory regime must be improved through increased support for specific off-label approvals and minor uses (short term) and a move to a risk-based approach (longer term). Consistently competent meat processors should be able to source meat inspection services from accredited private-sector providers within a system managed by the competent authority. Short-term changes can be introduced, but the longer-term goal will be to negotiate in the EU for a risk-based system. “

The Farming Regulation Task Force

1. In June 2010, as part of the Coalition Government's Growth Agenda, James Paice, Minister of State for Agriculture and Food, established the Farming Regulation Task Force. He asked us to advise the Government on a new approach to regulation in England that looks through the eyes of a farmer or food-processor.
2. Our Task Force exists because farming and the food industry matter. Together, they form nearly 7% of the economy. Together, they are a key component of the 'green economy' and of our future economic growth. We need farmers to produce more food, but to do so sustainably. Farmers manage much of the landscape and help look after our renewable natural resources, our farm animals, our landscape and our wildlife.
3. From the very beginning, maintaining outcomes has been a key part of our vision. Our work is not – as one commentator stated – “a bonfire of regulation”. Instead, we are all about *better* regulation. The ability of farming and food-processing businesses to contribute to outcomes is constrained by burdens associated with regulation, particularly in terms of process and paperwork.
4. To identify the most onerous burdens– and to work out how they can be reduced or removed – we have looked at regulation from the point of view of the affected businesses. Conducting extensive consultation with industry and others, we have considered where changes are needed in the 'culture' of regulation in Defra, its agencies and delivery partners. We have identified the regulations that impose a burden but have little positive outcome.
5. In the light of consultees' views, we have focused on over-complex implementation, but have also identified a few instances of unnecessary regulation and gold-plated legislation. We have addressed only those issues identified as a problem by contributors. Only in a very few cases have we made tough choices not to take forward ideas presented to us.
6. We are not the first group to look at regulatory burdens; we follow, most notably, Philip Hampton's 2005 review of inspection and enforcement. But our bottom-up approach is very different to that of previous 'red tape reviews'. These have examined regulation or regulators top-down, and proposed generic principles and specific targets to be achieved by the Government.
7. This fundamental difference, together with the Coalition Government's drivers of the Growth Agenda and better regulation, makes us confident that our report could and should be the stimulus that Ministers need to make real, long-lasting change. Without this change, farming and food-processing businesses will continue to feel frustration at constraints on their ability to deliver the outcomes that we ask of them: producing food, contributing to the economy, and looking after natural resources, farm animals, landscape and wildlife.

Our report and recommendations

8. Our recommendations for change fall into two groups: first, steps to effect wide regulatory culture change (chapters 2-3); second, proposals for amendments to specific legislative frameworks (chapters 4-11). Throughout we have balanced boldness with credibility. Our recommendations are challenging but deliverable.

9. In **CHAPTER 2**, we address a series of recommendations to both the Government and industry related to **changing the way we work**. The shift, so sorely needed, is from bureaucracy to responsibility and partnership. We make six sets of proposals. First, we identify how to refine the regulatory culture. The starting point must be to ask whether there is a problem to address and then to identify alternatives to regulation. We set out the questions that policy-makers, regulators, industry and others must ask themselves at this first stage. Second, the partnership between Government and industry must be improved and strengthened. We identify ways in which industry can demonstrate responsibility to justify receiving Government's trust, and ways in which the Government can make better use of industry expertise, including through independent regulatory review.
10. Third, we need a new approach to inspection and enforcement that is targeted and fairer. We expand on this in Chapter 3, but here stress that we understand the importance of the competent authority for ensuring effective enforcement. Penalties must be proportionate: stiff punishments for major misdemeanours but a light touch for breaches of process and minor non-compliance.
11. Fourth, we make strategic recommendations for the Government to reduce and reform paperwork and process (and provide further details in Chapter 5). For the Government to deliver excellent customer service, it must make it easier for businesses to operate, for example through general licences and single information points. We set out new principles for Government collection of data. The Government should set a vision of moving more paperwork online, and must promote and make better use of the Farming Theme of Business Link.
12. Fifth, the Government should better understand farming and farmers in order to influence behaviour, agree outcomes, and develop and implement ways of achieving change without recourse to regulation. Finally, the UK's engagement in the European Union (EU) must be greater, earlier and in partnership with industry. The Coalition Government's guiding principles for EU legislation are admirable but can be developed. The Government should lead change in the EU, pressing the European institutions to place the 'end-user' at the centre of EU policy-making and regulation.
13. In **CHAPTER 3** we consider long-standing concerns about the number and type of on-farm **inspections**. Farmers see inspections as time consuming and unnecessarily disruptive to their businesses, and their purpose may not always be clear. There is little benefit in official inspection of low-risk, normally compliant premises. We provide principles to improve the way that inspections are planned and carried out. Inspections must be clearly risk-based, targeted and, where possible, organised so that they work with normal business practice, rather than disrupting it.
14. To achieve this, and to remove duplication, the principle of **earned recognition** must be developed and used. Under this, regulators take account of a wide range of information about the likely risk of each business. This includes membership of an accredited private-sector assurance scheme or other evidence that farmers have chosen to invest in, and which may duplicate official inspection. Local Authorities should not inspect the same requirements that are checked by Defra agencies and delivery partners as part of cross-compliance inspections. Finally, the Government should provide a web-based platform to help farmers and regulators share information to help determine risk and direct inspection efforts.
15. We say to private-sector assurance schemes that the process of culture change is one that should apply across the board. Our recommendations on earned recognition and sharing information will be of little benefit if official inspections are simply replaced by equally bureaucratic and process-driven private sector audits.

16. In **CHAPTER 4** we consider the key points of regulation that affect **farms as businesses**. Planning is a substantial barrier for development. It is vital that current regulations are changed to allow farm businesses to adapt, innovate and grow. The forthcoming National Planning Policy Framework must explicitly support sustainable and productive farming and must promote sustainable intensification. Current regulations on permitted development and the prior notification procedure should be amended so that thresholds for agricultural developments are increased. Polytunnels and other horticultural support structures should be added to the General Permitted Development Order, under specific conditions.
17. Ensuring an adequate supply of seasonal labour is critical, particularly for horticulture. We suggest how the horticultural industry should encourage EU citizens to take its employment opportunities. This must be complemented by a new Seasonal Agricultural Workers Scheme. Amendments should be made to the gangmasters licensing system that are designed to improve farmers' and growers' perception of the system, and make inspections more targeted while still protecting workers. We also make recommendations on transport and health and safety.
18. In **CHAPTER 5**, we present proposals on **paperwork**. We set out the principles which Defra, its agencies and delivery partners should adopt when considering forms, data collection, online tools and guidance. We draw together the numerous changes to paperwork, record-keeping and process that are needed to simplify specific regulatory frameworks, notably for livestock movements, Nitrate Vulnerable Zones, the Single Payment Scheme, environmental permitting and food chain information. (We cover these in detail in the respective chapters.) Finally, in our digital age, Defra must move to collecting data required for agricultural surveys completely online.
19. In **CHAPTER 6** we consider key aspects of **environmental legislation** that impact farmers. We identify how to reduce burdens of process without compromising environmental protection. Diffuse pollution from agriculture, including nitrates, must be addressed, but the current 'Nitrate Regulations'¹ are a blunt, inflexible and, arguably, an ineffective instrument. The system is overly focused on process at the expense of achieving crucial environmental outcomes. In the short term, and as part of the upcoming review of the Regulations, there must be a significant reduction in the paperwork and calculations required in proving compliance. Longer term, there must be a more holistic approach to managing nitrates, through a catchment-based approach to nutrient management.
20. We address problems with water availability and supply. The Water White Paper should recognise the importance of a sustainable water supply to the farming sector. Water must be better managed as a resource for agriculture; lifting specific burdens relating to private water supplies, water fittings regulations and abstraction licences is important.
21. The regulation of waste and integrated pollution prevention and control (IPPC) must be made as light touch as possible. Environmental permitting forms and guidance should be tailored to the agricultural sector. The need for farmer registration could be reduced by applying a general licence to some negligible risk waste activities. A three-tier approach to waste regulations and exemptions should be adopted. We suggest ways of reducing IPPC inspections, ensuring objective application and complaints processes, and removing controls if possible. Farmers should be able to seek permission to dispose of fly-tipped material at council waste sites. The Government should ensure greater consistency across its policies relating to renewable energy in the farming sector, and make specific recommendations for individual regimes.
22. In **CHAPTER 7**, we focus on the **Common Agricultural Policy (CAP), the Single Payment Scheme (SPS) and cross-compliance**. Defra's negotiating position for the CAP 2014–20 should include a focus on the

¹ We refer to the Nitrate Pollution Prevention Regulations 2008 as the 'Nitrates Regulations' throughout this report.

need for simplicity and resist mechanisms such as capping and quotas that would introduce unnecessary complexity. When it comes to the regulations associated with the revised regime Defra should focus on outcomes rather than process, and apply our approach to better use of risk-assessment for inspections.

23. To improve the SPS, the mapping system must be simplified, payments made only to holdings with 5 hectares of 'actively managed' land excluding hard surfaces and other ineligible areas; entitlements should be abolished. Those who claim SPS should be those managing the land, as they produce food and contribute to good environmental outcomes. A series of improvements would collectively reduce SPS administrative burdens: making greater use of pre-populated forms, maximising the use of online facilities for the application process, removing crop codes, and ensuring that cross-compliance conditions are focused on outcomes rather than process. Commoners should claim SPS as a group through their Commoners Association. Under cross-compliance, all but four Good Agricultural and Environmental Condition requirements (GAECs) and two Statutory Management Responsibilities (SMRs) should be retained, with these four being amended, refocused or removed in ways that do not adversely affect environmental outcomes.

24. In considering **Farmed Animals (CHAPTER 8)** our major effort has been on the related issues of animal identification and movement control. The present arrangements, including the six-day movement restriction, are intended to minimise disease spread. It is important that these controls are easily understood and complied with, so that they protect the livestock industry. Unfortunately, the current rules are criticised as complex and obstructive to livestock production, and this has led to relatively high levels of non-compliance.

25. This system must be replaced by a new package of measures that balances the relative risk of disease spread and the need of businesses for a simpler system that takes account of the seasonal nature of livestock production. The key elements of this new approach should comprise: rapid adoption of electronic reporting of animal movements, introduction of a single, distance-limited CPH designation (replacing Sole Occupancy Authorities and Cattle Tracing Scheme Links) that will allow farm-to-farm movement of animals without record keeping, and free movement of animals between individual farms without triggering a six-day standstill. Approved separation facilities within a CPH to hold bought-in animals without a standstill on the rest of the holding should also be allowed, thereby allowing producers to make maximum use of limited market opportunities.

26. In **CHAPTER 9**, we focus on regulatory issues specific to the **horticulture and arable sectors**. The EU Fruit and Vegetable Scheme and its application in England have been dysfunctional. The recent issuance of guidance will hopefully usher in a new era of co-operation between industry and the Government. The review of compliance should be swiftly executed to bring much-needed clarity that benefits all those involved in the scheme and its reputation.

27. The pesticides regulatory regime must be improved. In the short term, there should be increased support for specific off-label approvals and minor uses. In the longer term, the regulatory framework for pesticides must be risk-based, and Government should push for further harmonisation at a European level, to give growers access to the most effective pesticides. Finally, the Government must act immediately to amend the Misuse of Drugs Act so that industrial hemp growers stop being subject to a dual licensing regime in blatant denial of the Government's own better regulation principles.

28. Ministers asked us to consider **Meat hygiene controls** as an example of burdensome official inspection, and we address this in **CHAPTER 10**. Consistently competent meat processors should be able to source meat inspection services from accredited private-sector providers within a system managed by the competent authority. The longer-term goal of a risk-based system requires change to EU rules; the

Government should take the lead in piloting innovative inspection processes and making recommendations to the European Commission. In the short term, changes that do not require changes to EU rules should be introduced, including the greater use of 'cold inspection' in small processors with appropriate facilities. The Government should make maximum use of derogations in EU law controlling TSEs and support proportionate, risk-based changes, including the TSE roadmap, to these rules and implement changes without delay once they are agreed.

29. In this chapter, we also identify ways to reduce regulatory burdens on the **food-processing industry**. In comparison to farming, we received little evidence of such burdens. Nevertheless, in the light of concerns expressed, we propose revisiting the interpretation of legislation relating to antibiotic failures in milk and removing the Beef Labelling Scheme. Defra and the Food Standards Agency should engage constructively with the current reviews on the sampling of veterinary residues and trichinella controls. Earned recognition should be used to help reduce paperwork arising from food chain information requirements and to reduce inspections of poultry and egg producers.

Conclusion

30. Taken together, we have about 215 recommendations that represent a challenging programme of change. We recognise that this cannot be achieved overnight. But, from our discussions with Defra, its agencies and delivery partners, with industry and with NGOs, we are confident that it is achievable. Our thinking accords with the direction of travel that Defra and regulators are embarking on in order to modernise public services and devolve power. We have also been impressed by the willingness of trade associations, businesses and individuals to take on more responsibility.

31. So the question should not be 'if' Government should do this, but 'by when?'. In many cases, we offer recommendations on two timescales. We make short-term proposals on the current process (e.g. for change over the next year or two). We often complement these with an alternative medium-term vision that takes into account the difficulties and timescales involved in EU negotiations. These may take many years to achieve, but unless they are pressed for now, they will remain forever.

32. The time is right to make change happen. The onus will be on Ministers to lead from the top. During our work, we often heard that our recommendations would contravene EU law or would be difficult to implement. From our perspective, this is over cautious and evasive. To really make progress, to set and lead the agenda, you will need to break a few eggs. The attitude must be 'can do, will do', not 'can't, won't'. Ministers asked us to be bold. With this report, we now offer them and all those others involved the same advice.

The Farming Regulation Task Force

The Task Force has been appointed and commissioned by Defra Minister James Paice. Each member was appointed in his/her individual capacity. None of us has represented the views of any particular organisation. Our collective experience covers farming and growing, retail, food processing, conservation, private and public sector management, and regulatory implementation and enforcement. Task Force members are as follows:

- Richard Macdonald, Chair
- Judith Donovan
- William Goodwin
- John Healey
- Heather Jenkins
- Richard Percy
- Marion Regan
- Andy Robertson
- Stephen Tapper

Task Force meetings were also attended by Duncan Budd of the Better Regulation Executive (BIS) and Defra officials.

Below, Task Force members give potted biographies and explain the reasons why they joined the Task Force.

Judith Donovan CBE is a Yorkshire businesswoman with a variety of non-executive roles including lottery and post. She sits on the British Wool Marketing Board and has recently completed a 10 year non exec stint on the Board of the Health and Safety Executive where she was the Agriculture Champion responsible for launching the 'Make the promise' campaign. "Although I 'retired' to a farming area of the Yorkshire Dales 11 years ago", Judith says, "I really only got to know the sector through my work on HSE as Agriculture Champion. I have been immensely impressed by the resilience and focus of the sector and their tolerance of over-the-top bureaucracy which I would like to help remove. (On the other hand I have been appalled at farmers' casual attitude to killing and injuring themselves, their workers and their families.)"

William Goodwin is a dairy farmer from Ardingly in West Sussex and has a herd of 700 cows. William is a board member on the Sainsbury's Dairy Development Group and represents West Sussex on the NFU Dairy Commodity Board. He is a trustee of the Nuffield Farming Scholarship Trust and is Vice- Chairman of the South of England Agricultural Society. William says "Over the last couple of years or so, the refocusing of peoples' attention on food and food security, in particular, has helped to bring about a sea-change in attitude towards how we as primary producers are able produce more and impact less in the future. I could not miss the opportunity to play my part in ensuring that regulations do the same, i.e. deliver better outcomes for all while impacting less both on business and taxpayer alike."

John Healey has been a practising solicitor since 1993, working in industry for the last 15 years and most recently as Company Secretary for Warburtons, the second biggest grocery brand in the UK. "I am

responsible for compliance and risk management within our business and I have a keen interest in the developing regulatory framework and its impact on the practicalities of operating a food production business. Most regulation is well intentioned and I am particularly keen to ensure that future regulation is proportionate and targeted. A number of my Task Force colleagues have many years experience in the farming sector. I am able to offer a food industry perspective on the exciting challenge of delivering reform to an over-regulated industry.”

Heather Jenkins, a farmer's daughter, has worked for Waitrose since 1980 and is currently Buying Director for Meat, Poultry, Fish, Dairy, Eggs and Agriculture Strategy. In this capacity her work has exposed her to food manufacturing, processing and sustainability throughout the world. Heather is a governor of Harper Adams University where she also studied. Heather says “During my career I have been actively involved in developing livestock procurement schemes. Working closely with many farming groups across all species, I understand how bureaucracy and duplication has frustrated farmers and added cost to supply chains. With our own dedicated Waitrose mixed farm, I understand the importance of long-term sustainable partnerships for farmers and processors. It is also important to provide clear insights when creating market driven pricing structures to enable more sustainable supply chains. My knowledge of the market has led to a strong emphasis being placed on high standards, animal welfare and the environment. All of which aim to provide the best quality, choice and value for consumers. Ensuring farmers are not over burdened with regulation, avoiding duplication and enabling fair competition is vital to the future of British farming. I joined the Task Force in the hope that my ‘source to plate’ experience would be beneficial in helping shape practical and effective government initiatives.”

Richard Macdonald was Director General of the National Farmers’ Union from 1996-2009. He is now a non-executive director of Moy Park, Dairy Crest and NIAB, a governor of the Royal Agricultural College, a trustee of Farm Africa, and a consultant to various food companies. “When the Minister asked me to get involved, my immediate reaction was to be hesitant. Many people have tried to improve regulation and not achieved much. However, I was convinced that this Government really means to reduce the regulatory burden on farming and food processing. Having called for regulatory improvements for years myself, I could hardly turn down this opportunity to put the case myself. I sincerely hope that our report makes a big difference.”

Marion Regan is a soft fruit and arable grower and former Chairman of Berry Gardens Growers: “I have experience of the day to day farming issues arising from several years of a default regulatory culture. In horticulture with its high labour needs this understandably involves regulation around employment, health & safety etc but also the peculiarities of the EU fruit and vegetable regime. Regulations can portray farmers as untrustworthy and farming as environmentally damaging, which it needn’t be. They have tilted the balance away from those who know the practicalities of farming and managing the farmed landscape. Regulations cannot easily deal with conflicting opinions about the countryside, but should be fair and constructive. Farmers need to meet Professor Beddington’s challenge (in the Foresight report, *The Future of Food and Farming*) to grow more using less. This has made me ask whether we can find a better balance between individual responsibility, risk and regulation.”

Richard Percy has farmed in Hertfordshire for 28 years. He was formerly NFU Council delegate for the county and is a non-executive director of NFU Mutual. Between 2003 and 2009 he was a Board Member of the Environment Agency. “I have always subscribed to the view that farming needs to improve its own performance at the same time as producing food efficiently. The problem with blunt regulation is that it becomes an end in itself rather than being a driver for good practice. The industry has shown itself willing to improve with initiatives like farm assurance and the Voluntary Initiative and the time has come to reward those farmers for those efforts. I hope the Government is willing to work in partnership with the industry to find a better way forward in these times when world food supply is getting even tighter.”

Andy Robertson was previously Chief Agricultural Officer in the Scottish Executive and Chief Executive of NFU Scotland. He now lives and works in Sussex. "Having worked in and with the agriculture and food industries for over 30 years, I have seen the extent to which the increase in regulation has engulfed farmers and others simply trying to get on with running their businesses. Previous better regulation initiatives have come and gone but the personal commitment of the Minister and the general drive of this administration towards less government and the Big Society convinced me that there is a real determination to change things through this Task Force."

Dr Stephen Tapper was formerly the Director of Policy and Public Affairs for The Game and Wildlife Conservation Trust. "England's countryside and wildlife is intimately bound up with farms and farming. Sadly the richness of our rural biodiversity has been reduced by modern agriculture and so, where we can, we need to protect it through regulation and, if possible, enhance it through stewardship. Rules and schemes need to be simple and effective; not bureaucratic and picky. Our report aims to make it easier for farmers to protect the environment better."

Acknowledgments

As Task Force members, we are hugely grateful to the many individuals in the public sector and in private capacities who have been universally giving and obliging in helping us to construct this report. We thank the many organisations and individuals who contributed to our evidence gathering (listed in Annex 1 and summarised in paragraph 1.20), who hosted and attended our many workshops, and/or with whom we discussed ideas subsequently. We thank *Farmers Weekly* which ran an online discussion forum. We are immensely grateful to the Task Force Secretariat (Ruth Alban, Vicky Clarke, Alan Dearman, John Fletcher, Rebecca Kenner, James Lowen, Paul McDonald and Lee McDonough, also Jillian Anderson, David Harris and Tony Hilton) without whom this report would not have been possible.

Chapter 1 Introduction

1.01 Here we set the context for our work. We explain why the time is right for the Farming Regulation Task Force. We summarise what we've done and how we've done it. Then we recommend what needs to happen.

Why have a Farming Regulation Task Force?

1.02 Above all, farming and the food industry matter. Together they form nearly 7% of the economy and are a key component of our future economic growth. They manage much of the landscape and help look after our renewable natural resources, our farm animals and our wildlife.

1.03 In recent years, the world has faced huge food price spikes that cast doubt on our collective ability to feed a rapidly growing population cost-effectively. Recent reports by the United Nations and Foresight² suggest that that the world needs to substantially increase food production and to do so sustainably. So we need to enable farmers to produce more food, but without compromising environmental, safety, welfare and other standards.

1.04 The more farmers are free to compete, the more they can contribute to the UK's economic recovery. In aiming to reduce barriers to farming and food industry competitiveness, our report has a place in the Coalition Government's plan for economic recovery – alongside the Government's initiatives on growth and the green economy.

1.05 Agriculture contributes £7.1 billion in Gross Value Added to the UK economy and employs 534,000 people. The wider agri-food sector generates £85 billion and employs 3.6 million people. The UK rural economy is worth £300 billion pa and employs 5.5 m people.

1.06 As well as producing food, farmers play a key role in managing our natural resources: our water, our landscape, our wildlife. Farmers have stewardship responsibilities. Some of these are done voluntarily; others are a condition of Common Agricultural Policy (CAP) support or of agri-environment scheme incentives.

1.07 So we are clear on the reasons why farming and food processing matter: producing food, managing and protecting land, contributing to the national and rural economies. As the NFU put it, we need to produce more and impact less. We are equally clear that farmers feel frustrated by constraints on their ability to make farming matter *more*. We know that farming businesses, particularly the micro-businesses and sole traders that form 98% of commercial farm businesses in England³, have felt tied to the office by red tape.

² <http://www.bis.gov.uk/assets/bispartners/foresight/docs/food-and-farming/11-547-future-of-food-and-farming-summary.pdf>

³ Better Regulation Executive (2010) *Lightening the load: the regulatory impact on UK's smallest businesses*. This report defines a micro-business as a business with fewer than 10 employees.

1.08 Under the previous Government, Defra acknowledged farmers' concerns and made some progress towards them. But, as the 2010 *Farmers Weekly* campaign to cut red tape and a NFU survey show, the industry as a whole remains dissatisfied with progress and indeed feels that, if anything, demands have increased.

1.09 It was against this background – why farming matters, why farmers want change – and within the context of economic recovery, that the Coalition Agreement made a commitment to 'reduce the regulatory burden on farmers by moving to a risk-based system of regulation'. As part of this process, in June 2010, James Paice (Minister of State for Agriculture and Food) established our Task Force to advise Government on a new approach that redresses the balance and looks at regulation through the eyes of a farmer or food-processor.

1.10 The Task Force forms part of the Coalition Government's approach to improving the regulatory framework. While we have been working, other Government initiatives have been launched (listed below). Although we have stayed in touch with these, we are an independent advisory group and have felt free to say what we think irrespective of other views.

- Key Defra-led initiatives of interest or relevance to the Task Force are: Natural Environment White Paper; Water White Paper; uplands review; TB Eradication Group; waste review; animal welfare inspections review; Forestry Task Force; Fruit and Vegetables Task Force; the responsibility- and cost-sharing advisory group/programme for animal health; and online farming self assessments, tools and transactional services delivered through the farming theme on the Business Link site.
- Key Whitehall-wide initiatives relevant to Task Force work include: Growth Agenda; green economy; better regulation; localism; Big Society; Digital Britain; transparency; the Public Sector Reform White Paper (and the principle of 'Government doing only what only Government can do'); and the Foresight review of food production.
- Two 2010 Communications from the European Commission are also particularly relevant, namely the proposals for the Common Agricultural Policy 2014-2020⁴ and the *Communication on smarter regulation*⁵.

1.11 Of the Whitehall-wide drivers, the clearest synergies for the Task Force are with the Coalition Government's better regulation agenda. Absolutely key context includes the new policies of 'one in, one out', an end to the 'culture of box-ticking' and the moratorium on new domestic legislation affecting micro-businesses, which will affect 98% of England's farming businesses. Of course we are not the first group to look at regulatory burdens. Two key reports in the last decade were *Farming and Food – a sustainable future* (2002: the 'Curry report') and *Reducing administrative burdens: effective inspection and enforcement* (2005: the 'Hampton review'). These reports and several others⁶ had similar key findings and recommendations, including:

- responsibility sharing with industry;
- avoiding duplication;
- simplification of the regulatory process/ reducing the burden;

⁴ http://ec.europa.eu/agriculture/cap-post-2013/communication/com2010-672_en.pdf

⁵ http://ec.europa.eu/governance/better_regulation/key_docs_en.htm

⁶ Key reviews include: Don Curry (2002) *Farming and food: A sustainable future. The Policy Commission*; Defra Regulation Task Force (2003) *Full reports*; Philip Hampton (2005) *Reducing administrative burdens: effective inspection and enforcement*; Better Regulation Task Force (2005) *Regulation – less is more. Reducing burdens, improving outcomes*; ADAS (2005) *A review of animal health policies: an assessment of the administrative burden and rate of compliance*; Defra (2005) *Partners for success: a farm regulation and charging strategy*. November 2005 David Eves (2006) *Review of the Animal Health and Welfare Delivery Landscape*; Better Regulation Commission (2006) *Risk, responsibility and regulation – whose risk is it anyway*; European Commission (2010) *Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions: Smart Regulation in the EU*.

- good practice on farms should be recognised by inspectors;
- regulation based on risk;
- regulation based on sound principles (proportionate; accountable; consistent; transparent; and targeted); and
- maintaining or increasing standards.

1.12 So we were not starting from scratch. The Better Regulation Commission recommended that the stock of regulations should be reviewed as part of simplification. Regulating based on risk was in both Hampton and the ADAS review of animal health policies, which promoted better risk assessment and targeting of regulatory resources.

1.13 In spite of this, farmers have not noticed much change. In his 2006 *Review of the animal health and welfare delivery landscape*, David Eves said: “Claims from enforcers that there is a common approach based on risk assessment which targets the worst performers have been made to me but I found no strong evidence to back these claims.” The message from industry is that there is still some way to go.

1.14 So we must not only build on previous work; we must make it happen this time. In fact what is noticeable is how many recommendations for change have taken place in the past and how few have been followed all the way through. Some previous reports have examined regulation top-down, proposed generic principles and specific targets to be achieved by Government. We have done things differently. We have looked at regulation from the point of view of the affected businesses (i.e. from bottom up). We have considered where changes are needed in the ‘culture’ of regulation. We have identified the regulations that impose a burden but have little positive outcome.

What has the Farming Regulation Task Force done?

1.15 James Paice MP and Richard Macdonald agreed the Task Force terms of reference in July 2010. These read as follows:

In support of a more competitive farming and food-processing industry that contributes to the economic recovery, to identify ways to reduce the regulatory burden on farmers and food processors through a review of relevant regulations and their implementation, and advise on how best to achieve a risk-based system of regulation in future whilst maintaining high environmental, welfare and safety standards.

1.16 From the very beginning, maintaining outcomes has been a key part of our vision. We are not a ‘deregulation task force’. Our work is not (as one commentator stated) “a bonfire of regulation”. In reality, whatever your view, such a bonfire is just not possible –because regulation serves a purpose and because much legislation affecting the farming and food-processing industries comes from the EU. Instead, we are all about *better* regulation; creating a culture change that benefits all our desired outcomes wherever possible. We are about promoting farming and food processing, and about protecting and enforcing standards.

1.17 The standards that concern us relate to food safety, animal welfare, environment and health and safety. Ensuring safe food is an absolute priority for us, as is keeping healthy and well-kept animals, maintaining safe and fair places of work, preserving clean air and water, retaining healthy soil and biodiversity. We have taken care to ensure that our recommendations, if adopted, will not lower standards for consumers, workers, animals or the environment. Farming and food-processing businesses recognise the general need for regulation and inspection. The Aldersgate Group has said that high-quality regulation

can help stimulate growth as well as achieving desired outcomes⁷, and we do not disagree. We also want a more competitive food and farming industry, which develops the capability and capacity needed to increase food production sustainably.

1.18 Ministers have given us two steers to complement our formal terms of reference. First, that we should make proposals designed to effect wide regulatory culture change (see chapters 2–3) as well as recommendations on specific legislative frameworks (grouped by theme; see chapters 4–11). Ministers envisage the first element as our long-lasting ‘legacy’ – which will underpin the specific recommendations. These specific proposals, in particular, range into the remit of departments other than Defra. Second, Ministers said that we should ‘be bold’. Accordingly, where we think a system is broke, we say so – even if we know full well that our recommendation is not solely within the gift of Defra or industry to deliver. An example is where our proposal will mean renegotiating existing EU legislation (a lengthy, resource-intensive and uncertain process).

1.19 To find out what needs to change, we have taken pains to be inclusive and consultative. We have spread the net wide when gathering evidence of problems and solutions: from individual farmers to trade associations and from commercial entities to charities. We have been committed to ensuring everyone interested could have their say over a three-month consultation period. We have criss-crossed the country in doing so.

1.20 The response has been great. We have received formal submissions from 78 organisations and received face-to-face input from hundreds of people including through meetings convened by an additional 36 organisations. We have received written contributions from more than 100 individual farmers. We have run an online consultation, to which the number of contributors reached three figures. We were greatly helped by Farmers Weekly who ran a discussion forum. We have held follow-up conversations or email exchanges with many individuals and organisations. We are grateful to you all.

1.21 We have not conducted a comprehensive review of every single regulation affecting farming and food-processing businesses. Instead, we have focused our efforts within categories on where problems exist. We have sought to identify:

- disproportionate, over-complex implementation and enforcement with a view to changing to a more simple, empathetic, risk-based and outcome-driven approach;
- unnecessary regulatory measures, with a view to revocation or renegotiation; and
- gold plated regulations with a view to making recommendations for alternative approaches/removal of burdens.

1.22 Some issues needed our advice on a timescale quicker than this report. Accordingly, we provided Ministers with interim advice on CAP cross-compliance, hemp, poultrymeat regulations and independent regulatory review (see Annex 2). This report contains our final recommendations, and thus succeeds that early advice.

1.23 Unlike many of our predecessors, our review has been bottom-up rather than top-down. We have focused only on those areas identified as a problem by contributors. (If farmers haven’t said “it’s broke”, we agreed “don’t fix it”.) Only in a very few cases, in the light of our tight timeframe and limited resources, have we had to make tough choices not to take forward every idea presented to us. The reasons for this were various. Some proposals were not considered as we felt that:

- different bodies were more competent to consider them: for example, we referred some ideas to the TB Eradication Group and the Forestry Regulation Task Force;

⁷ As advocated by the Aldersgate Group (2009) in *Green Foundations. The path to a vibrant economy, competitive advantage and sustainable prosperity*

- they were outside our remit of reducing regulatory burdens (e.g. because they were mainstream policy, such as tax, or because they were non-regulatory requirements, e.g. the Entry and Higher Level Stewardship schemes);
- we could not add value to reviews that have already taken place (e.g. Lord Young’s review of health and safety); or
- they were too bold to be realistic under any circumstances, or too insubstantial to be bold.

1.24 We also heard concerns from consultees about generic business issues such as pensions, paternity pay, default retirement age, returns to the Office of National Statistics on monthly wages and salaries, business register and employment survey etc. We emphasise how important these concerns are to business, especially micro-businesses such as farmers: they are part of the cumulative regulatory burden on business, over and above food-related regulation. We have not covered these issues in this report only because we feel that we could not add particular value to current reviews across Government and the inputs from business to Government. We are passing on all the wider issues raised with us on to the relevant Government department.

1.25 We are aware that our effort has focused on reviewing the current stock of legislation – and that there is a continual pipeline of forthcoming EU regulation that we have not examined. It would be very unfortunate if Defra took steps to implement our recommendations on current regulations, but did not apply the same strategic principles to all future legislation.

1.26 Our mandate relates only to England because farming and food are devolved to the governments of Scotland, Wales and Northern Ireland. But we are aware that recommendations we may make, if adopted by Defra, may have knock-on effects for the other administrations. We are also sensitive to the problems faced by cross-border farms. Aware that Scotland and Wales have both conducted reviews of red tape, we discussed our emerging proposals with the governments of Scotland and Wales.

1.27 We examined the regulations at four stages in the food chain: farming (including horticulture); food issues on-farm; food processing where farmer and processor interests overlap; and processing of farm produce. Our remit did not extend along the food chain beyond this (e.g. to retail). We received much more evidence related to farming than to food processing.

Where next – and how will we know if we have succeeded?

1.28 We are recommending far-reaching regulatory culture change. We want to improve the way in which regulation is used and in which regulators operate. We want rules to be applied intelligently and for the collective focus be on outcomes rather than process. We want to move from an environment where the default is to regulate to an approach based on *trust*, *responsibility* and *partnership*. Indeed, if this does not all happen, we will largely end up back where we started!

1.29 We welcome the Coalition Government’s intention to *trust* industry. But the flip side of the coin is the need for industry to take *responsibility* and demonstrate that this trust is warranted. One way that we believe that both trust and responsibility can be demonstrated is through ‘earned recognition’.

1.30 *Partnership* is fundamental to our approach. We believe there is a need for a new partnership between Government, industry and, where it makes sense, others such as non-governmental organisations (NGOs). As part of our propositions for regulatory culture change, we suggest ways in which such a partnership could work – and address recommendations to both industry and Government. Our report is not an idealistic, impractical vision, but a series of practical recommendations that are deliverable provided all interest groups work collectively to bring about constructive change.

1.31 This is a significant programme that cannot be achieved overnight. But, from our discussions with Defra, its agencies and delivery partners, with industry and with NGOs, it is evident that we are not starting

from scratch. Our thinking accords with the direction of travel that Defra and regulators are embarking on in order to modernise public services and devolve power. We have been impressed by the willingness of trade associations, businesses and individuals to take on more responsibility.

1.32 How will we know whether our report has succeeded in changing the way that Government works? When the relationship between Government and industry can be characterised by trust, responsibility and partnership, we will be reasonably confident that our culture change legacy has been implemented. It will be for Government to decide against how to measure its progress against the recommendations for specific regulatory change. But it strikes us that regular formal reviews and impact assessments should provide a baseline against which success can be measured. Post-implementation reviews also offer a useful tool. The independent regulatory review panel that we recommend could have a role in reviewing progress (paragraph 2.13–14).

1.33 What about timing? Throughout our report, we seek to balance the boldness that Ministers have asked of us with the credibility that comes from understanding present realities. In many cases, we offer recommendations on two timescales. We make short-term proposals on the current process (e.g. for change over the next year or two). We often complement these with an alternative medium-term vision (e.g. for delivery by 2015, subject to timescales involved in EU negotiation). In writing this report, we are clear that achieving change through EU institutions will be time-consuming and difficult. Towards the end of this Parliament would seem the right time to review the overall impact of our recommendations, but regular short term reviews should also take place.

Chapter 2 Changing the way we work: from bureaucracy to responsibility and partnership

We direct the following outline recommendations both to Government (notably Defra family) and to the farming and food-processing industries (notably trade associations).

Revisit and refine the regulation culture (paragraphs 2.06–09)

The starting point must be to ask whether there is a problem to address and then to identify alternatives to regulation. We set out a series of critical questions that policy-makers, regulators, industry and others must ask themselves at the outset. We endorse the Coalition Government's approach to better regulation, which sets the parameters for making a real difference.

Cultivate and celebrate partnership (paragraphs 2.10–20)

Trust and responsibility, a two-sided coin, is the basis of the strengthened partnership that we envisage between Government and industry. Government and industry must share and own the problem, the science, the desired outcome and the solution. Defra should use independent industry expertise to shape the regulatory future. Government must strengthen its engagement with industry during the pre-consultation phase of developing (or co-designing) legislation. This includes inviting industry to take a leading role in drafting what would ideally be jointly owned guidance on implementation of regulation. Industry and Government should co-operate to strengthen Government's agricultural expertise.

Develop and demonstrate a new targeted and fairer approach to inspection and enforcement (paragraphs 2.21–28)

A risk-based approach to inspection is needed. To make this happen, it is critical to develop a system of 'earned recognition'. We give more detail in Chapter 3. Notwithstanding the need for 'small Government', the role of the competent authority is still key to ensuring effective enforcement. Penalties must be proportionate. Enforcement agencies will need to impose stiff punishments for major misdemeanours; these should be civil sanctions as well as criminal penalties, but a light touch for breaches of process and minor non-compliance. Where Defra cannot do this because of EU rules, it should lobby European institutions to change EU legislation.

Reduce and reform paperwork and process (paragraphs 2.29–43)

As part of continuous improvement and making it easier for businesses to operate, Government should: make greater use of general licences; commit to maximum response times and fixed decision points; and establish single sources of information. . We set out strategic recommendations for reducing paperwork (and discuss them further in Chapter 5). Guidance documents should be as short as possible and, where appropriate, provide a clear and succinct overview of how rules have changed. We need new principles for collecting data that make efficient use of industry and Government time. We need to move from

paperwork to 'digital by default', and to make better use of, and more clearly signpost the Farming Theme of Business Link. To wrap up all these recommendations, Defra, its agencies and delivery partners should, within six months, produce a plan for reducing process and paperwork in their various interfaces with the farming and food-processing industries.

Explore and embrace tools to influence farmer behaviour (paragraphs 2.44–47)

Influencing behaviour, rather than mandating it through legislation, can be more successful. This can involve working to encourage existing behaviour as well as changing it. It is important for Government and trade associations to understand farmers better in order to influence behaviour, to agree outcomes, and develop and implement ways of achieving change without recourse to regulation.

Engaging in Europe: more, earlier and in partnership (paragraphs 2.48–53)

The UK's engagement in the EU should be greater, earlier and in partnership with industry. The Coalition Government's guiding principles for EU legislation are admirable, but could be developed further. The Government should use the European Commission's *Communication on smart regulation* to lead change. Government should press the European institutions to place the 'end-user' (e.g. those directly affected by regulation) at the centre of EU policy-making and regulation. The European Commission could improve compliance by Member States and the end-users of regulation by working with industry to draft guidance on implementing Community law. It could also encourage wider use of 'compliance promotion initiatives'. Finally, we make recommendations for improving inspections required by EU law.

Introduction

2.01 As we make clear in the Introduction, it is time for a step-change in improvement in how Defra (and Government more widely) and the farming/food-processing industries work together to solve problems and contribute to desired outcomes. Permeating this report is our fundamental principle that it is in everyone's interest – from Government regulators to individual farmers, from environmental NGOs to industry trade associations – for our shared focus to move from process (form-filling etc) to outcomes, and to do so through new ways of working together.

2.02 It's the results that count. In a farming and food processing context, results (or outcomes) are about *servicing* Government and the public, *promoting* a competitive food and farming industry with the capacity and capability to increase food production sustainably⁸, and *protecting* consumers, workers, animals and the environment. We believe that outcomes must always be clear, specific and evidence-led. Policy-makers must only adopt measures that deliver agreed outcomes. Too often we bind ourselves in process that makes it more difficult, not less, for us to achieve the outcomes we're striving for. The Soil Protection Review is an example: completing a lengthy form does not actually care for soil. So we are heartened by the Coalition Government's commitment to "end the culture of tick-box regulation".

2.03 Given the Coalition Government's approach of trusting business, reducing burdens on micro-businesses in particular and empowering individuals, there is an opportunity to change the way regulators operate, to the benefit of farmers, Government and others. There is also an opportunity for Government to look to the farming and food-processing industries to continue to engage in delivering the outcomes that society needs.

⁸ The link between sustainable goods and services and economic growth is made by the Aldersgate Group in their 2009 report *Green foundations. The path to a vibrant economy, competitive advantage and sustainable prosperity*.

2.04 Our thinking has been informed by current better regulation policy and previous red tape-related initiatives (paragraph 1.11 and footnote 5). The evidence that we have received from industry largely endorses Philip Hampton's principles of good regulation⁹. We also endorse the Coalition Government's Principles of Regulation, namely "less regulation, better regulation and regulation as a last resort"¹⁰.

2.05 Our proposals build on those of our predecessors, but we hope we add value by drawing extensively on ideas suggested by industry and others, and on our own expertise. We have developed a package of strategic recommendations which underpin the specific recommendations we make in our report and serve as what we hope will be a long-lasting legacy.

Revisit and refine the regulation culture

Start by asking whether there is a problem to address – and then identify alternatives to regulation

2.06 The Coalition Government's approach to better regulation should prompt policy-makers to solve problems in ways other than legislation. This approach includes the Government's new regulatory panels, its 'one in one out' policy and its moratorium on new domestic legislation affecting micro-businesses (which include 98% of England's farming businesses). **Once a problem has been identified, we recommend that Defra's starting point – for addressing wholly domestic problems and when negotiating in the European Union (EU) – should be non-regulatory solutions** such as those we identify in paragraph 2.08. While we acknowledge the need for robust regulation, it should be seen as one tool among several rather than the default. We know that this will not always be possible, e.g. when implementing some EU law, where the UK has little or no discretion if it is to avoid potentially costly infractions and maintain its negotiating credibility.

2.07 **We recommend that policy-makers, regulators, industry and others start by asking themselves a series of questions:**

- **what's the problem? Do we need to address it at all?**
- **what's the desired outcome? How is existing action (including regulation) contributing to this outcome?**
- **does *Government* need to do this? Can *only* Government do this?**
- **can we do this without regulation?**
- **if there is an unambiguous need for regulation:**
 - **how will it contribute to the desired outcome?**
 - **how do we keep it simple and clear, while keeping the focus on the outcome?**
 - **how do we avoid duplication in both legislation and subsequent enforcement?**
 - **and how do we keep the focus on *outcome* rather than *process*?**
- **is the private sector already doing something similar? If so, how can we use what they are doing including as a risk assessment tool?**

⁹ The Hampton principles are: regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most; regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take; no inspection should take place without a reason; businesses should not have to give unnecessary information, nor give the same piece of information twice; the few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions; regulators should provide authoritative, accessible advice easily and cheaply; regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work; and regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

¹⁰ Better Regulation Executive (2010) *Reducing regulation made simple. Less regulation, better regulation and regulation as a last resort.*

- **if we need regulation, what is the most efficient and cost effective inspection regime possible that achieves the desired outcome?**
- **what might be the unintended consequences of our proposal, and how might we avoid them?**
- **who is best placed to produce clear, succinct and simple guidance to help businesses comply?**

2.08 For this new culture to succeed, industry must become even more willing to comply and must strengthen its capacity to change. Industry can help by demonstrating responsibility, e.g. through voluntary initiatives. It can show policy-makers (in the UK and European institutions) how these alternatives work. This has worked well in limited cases already, e.g. the Voluntary Initiative on Pesticides. We recognise that such initiatives, and other recommendations that we direct to industry, represent a considerable challenge of capacity for trade associations, and that such initiatives take time to develop. There is a duty on Government and trade associations to involve only those who can add real value, and to be as efficient as possible. One way of doing this might be to second Defra officials into trade associations for short periods. **We recommend that trade associations continue to develop voluntary initiatives to address agreed problems and meet desired outcomes, and facilitate take-up by their membership. We also recommend that trade associations strengthen their ‘marketing’ of successful voluntary initiatives, including to policy-makers in the European Commission and European Parliament.**

We endorse the Coalition Government’s approach to better regulation

2.09 We are delighted that reducing regulation is a key priority for the Coalition Government. We are pleased that the Coalition has set out how it plans to implement its commitments in the Coalition Agreement through the Better Regulation Executive document *Reducing regulation made simple*¹¹. We endorse the Government’s new approach, particularly:

- the avoidance of gold-plating (for which see our views in paragraph 2.49); and
- the inclusion of a sunset clause in new domestic regulations which means that they will expire automatically (normally after seven years), unless action is taken to renew them.

Cultivate and celebrate partnership

Trust and responsibility: the basis of partnership

2.10 Partnership is key to the way forward. Government, particularly ‘small Government’, must involve industry as a partner in policy-making. We know that most farming and food-processing businesses want to operate to good practice standards and to comply with the law. One element of a successful Government-industry partnership is that Government and others need to be confident that industry can deliver. **We endorse the view that regulators should trust business, but this trust must be matched by industry taking responsibility. We recommend that industry should demonstrate this by trade associations informing their membership that the consequences of partnership include accepting punishment for breaches of trust. Just as we expect Government will respond to this report, we recommend that key industry bodies publish their own responses, demonstrating how they propose to take responsibility.**

2.11 **We recommend that such a response from industry bodies might include their views on the proposals we direct towards them throughout this report¹², as well as the following elements:**

¹¹ Better Regulation Executive (2010) *Reducing regulation made simple. Less regulation better regulation and regulation as a last resort.*

¹² specifically in paragraphs 2.12, 2.14, 2.16, 2.17, 2.19, 2.20, 2.28, 2.34, 2.36, 2.45 (final bullet), 2.50, 3.10, 3.20, 3.24, 3.31, 4.07, 4.62, 4.69, 4.83, 5.09, 5.17, 6.15, 6.22, 6.30, 6.50, 6.61, 6.67, 8.14, 8.22, 8.41, 9.13, 9.14, 9.17, 9.18, 9.26, 9.39, 9.42, 9.46, 10.17, 10.20 and 10.29.

- engaging openly with Government on key tools such as Impact Assessments that are already in place: the quality of Impact Assessments partly depends on industry providing detailed and accurate information; they would be more powerful if they were an agreed document;
- engaging fully with Government and third-party assurance bodies to develop a workable system of ‘earned recognition’ (for which see paragraphs 3.12–33);
- trade associations should continue to help their members become involved with approaches such as the Voluntary Initiatives on Pesticides and the Campaign for the Farmed Environment;
- trade associations and other industry bodies such as the Agricultural and Horticultural Development Board (AHDB) should drive, own and fund training and continuous professional development (CPD) for farmers, farm advisers and inspectors (e.g. agronomists, vets, Lantra), and that such training for farmers be recognised through earned recognition;
- promoting a role for farmers in assessing outcomes, and the sharing of data with regulators and industry representatives; and
- agreeing with the regulator what constitutes bad behaviour and how it should be addressed.

Sharing the problem and desired outcomes

2.12 Government should put the end-user at the centre of policy-making and agree with industry the problem, the desired outcome, the science and the solution, in partnership. (We acknowledge Government may wish to involve others with an interest, such as NGOs, but industry should be the focus of attention.) This is critical for responsibility-sharing. Outcomes are most likely to be deliverable where they are SMART, evidence-based and jointly owned. **We recommend that problem, outcome and solution should be routinely shared, discussed, collectively considered and owned between Government and industry. This includes informing the UK negotiating position in the EU.**

Using independent industry expertise to shape the regulatory future

2.13 Within Defra, there appears to be no mechanism for scrutinising the cumulative impact of regulation on sectors such as farming and food. We believe that Defra should use independent industry expertise to help do this. Doing so would reassure industry and other stakeholders. **We recommend the establishment of a senior panel or board within Defra to have oversight of better regulation matters. Periodic independent regulatory review should be a key principle for Government.**

2.14 **We recommend that the group:**

- should be a genuine ‘enquire and challenge’ panel if it is to hold Defra to account;
- include, as equal partners, up to three independent members, one of whom should chair the panel;
- include independent members who participate *as individuals* should have the breadth of experience to contribute fully;
- monitor Defra’s adherence to *better regulation* principles and have a strategic overview of regulations;
- steer Defra’s engagement on regulation issues with industry and act as a point of reference where business feels that standards are not being met;
- review progress with implementing the recommendations of this report; and
- be accountable to Ministers.

2.15 Our report goes to press before Government has published its response to the report of the Responsibility- and Cost-sharing Advisory Group for England¹³. The Group’s recommendations included

¹³ The Advisory Group reported in December 2010 (<http://www.defra.gov.uk/foodfarm/policy/animalhealth/sharing/pdf/rcsag-report101213.pdf>).

establishment of a 'Partnership Board', with industry represented alongside senior officials. If Government accepts this proposal in some form, and such a board comes into being, **we recommend that the board should have a role in contributing to better regulation decisions in relation to animal health and welfare.**

Defra should engage with industry at the earliest stages of developing (and possibly co-designing) legislation

2.16 **Where a regulatory route has been agreed to address a problem, we recommend that the framework should be designed by Government and industry in partnership to the greatest extent possible.** At present, Government prepares and consults on draft regulations, inviting views from representative bodies and individuals on detailed and sometimes complex texts. Industry should be more fully engaged in the process leading up to draft regulations, prior to formal consultation. Government lawyers draft the legislative text, but industry can ensure that it is both intelligible and fit for purpose.

2.17 **We recommend that policy-makers always invite a working group of industry representatives (both trade associations and farmers) to sense-check draft proposals in confidence and 'instructions to departmental lawyers' before they are turned into legal text. We recommend that Ministers should not approve formal consultation on any legislative proposal where industry has not been invited to contribute in this way.**

Defra should invite industry to play a leading role in drafting jointly owned guidance on implementation of regulations

2.18 Feedback from industry suggests that Government guidance often remains on shelves, unread and unused. Too often guidance seems to us to 'watch Government's back' rather than help those who need to comply with the law. There is no point in unusable and unused guidance. We believe industry is better able than Government to express requirements in terms that make sense to a farmer. While Government often has a statutory duty to provide guidance, this should not prevent it from involving industry more closely in its preparation.

2.19 Close collaboration between industry and Government should reduce the risk that farmers and food businesses are unclear about the requirements of legislation. **We recommend that:**

- **Defra and its regulators invite appropriate trade associations and farmers, where they have appropriate capacity, to play a leading role in drafting guidance, consulting other interest groups as appropriate;**
- **those involved in drafting jointly own that guidance with Government (assuming that Government is happy to sign up to that guidance) and should help promote it with those needing to use it; and**
- **Defra, its regulators and trade associations trial guidance with ordinary farmers in advance to sort out problems.**

Strengthening Government's agricultural expertise

2.20 We have been struck by how little hands-on agricultural expertise exists in Defra. We believe that bolstering Defra's expertise in farming and food processing will help the Department improve its policy and regulatory functions. We believe that staff at Defra, its agencies and delivery partners need to be familiar with farming and to 'speak farmer language'. **We recommend that Defra recruit industry specialists. In the short term, we recommend a programme of two-way secondments and training between Defra, its agencies and delivery partners, and industry, e.g. trade associations. We recommend exchanges, induction programmes and farm visits by Defra/agency staff. We endorse Environment Agency and Food**

Standards Agency efforts in encouraging such interchange and recommend that the practice become more common within Defra, its agencies and delivery partners.

Develop and demonstrate a new targeted and fairer approach to inspection and enforcement

A comprehensive risk-based approach to inspections must be the future

2.21 Efficient inspection and effective enforcement are fundamental. Inspections take time and are costly for all concerned. It is thus essential that inspections are targeted, provide support to help businesses deliver outcomes, and that everyone is clear why they are being carried out. As we say in paragraph 2.07, it is in everyone's interest that Defra, its agencies and delivery partners develop the most efficient and effective inspection regime possible that does not compromise the desired outcome. Although the principle of risk-based inspections has been widely accepted, we believe regulators do not make the best use of information obtained by business to improve their own performance. We believe that Government regulators should not need to inspect where the private sector is already doing this reliably.

2.22 This means building on the Hampton Principle that: "Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most" and the Regulators Compliance Code¹⁴ which says that: "Regulators should ensure that the allocation of their regulatory efforts and resources is targeted where they would be most effective by assessing the risks to their regulatory outcomes." Regulators' risk models and inspection programmes should go beyond the simple equation of 'big business = big risk' and consider performance indicators provided by business and to make sure that inspections are targeted at risks. Low-risk operations should not be inspected other than as part of a 'random' sample or to monitor compliance rates. Inspectors and enforcement agencies should have the resource to focus on the really bad cases.

2.23 **In summary, we recommend (see Chapter 3 for details):**

- **adoption of a system of *earned recognition* to inform and target inspections and that serves as an incentive for good practice;**
- **that regulators provide a proper explanation of their inspection programme.**

Role of the competent authority

2.24 Ultimate responsibility for enforcement must remain with the competent authority. It must enforce effectively to ensure outcome-delivery, provide clarity to businesses of expectations and to prevent free-riders undermining the investment of law-abiding businesses. Government must retain accountability for outcomes even if responsibility for delivery rests with others.

Making penalties proportionate

2.25 Many farmers feel that penalties are disproportionately high for minor misdemeanours (see case study; in another example, we heard that a livestock producer received 18 penalties, one for each of his cattle that were not appropriately marked). In some cases, the impact on outcomes was slight; in others, the mistakes were inadvertent or unintentional. We also heard views that: the range of penalties that

¹⁴ BERR (2007) *Regulators' compliance code: statutory code of practice for regulators*. See <http://www.berr.gov.uk/files/file45019.pdf>.

regulators have at their disposal was not wide enough, and that civil sanctions should be routinely available as well as criminal punishments.

Case study *The National Beef Association told us about a Rural Payments Agency (RPA) cross-compliance inspection of a farm with 3,000 head of cattle. The RPA inspector reportedly found two animals with only one tag rather than the required two. Despite having lost a tag, these cows could be easily identified because the farm kept meticulous records. Nevertheless, the farmer received an automatic 3% penalty off his Single Payment Scheme (SPS) payment and a 3% off all his stewardship scheme payments. We consider this penalty highly disproportionate to the negligible impact on outcomes.*

2.26 **We recommend that the proportionality and type of penalties applied by enforcement bodies be reviewed.** The system should better reflect the damage caused by breaches. Business must accept that this is a two-sided coin. Ideally regulators should reward businesses that provide evidence of good practice with a light touch and must penalise bad practice. The guiding premise should be ‘a light touch for the good, but a heavy stick for the bad’. If Government is to trust industry, clear breaches of that trust must be punished. We envisage a pyramid of escalating intervention along the lines of Figure 1.

Pyramid of enforcement tools

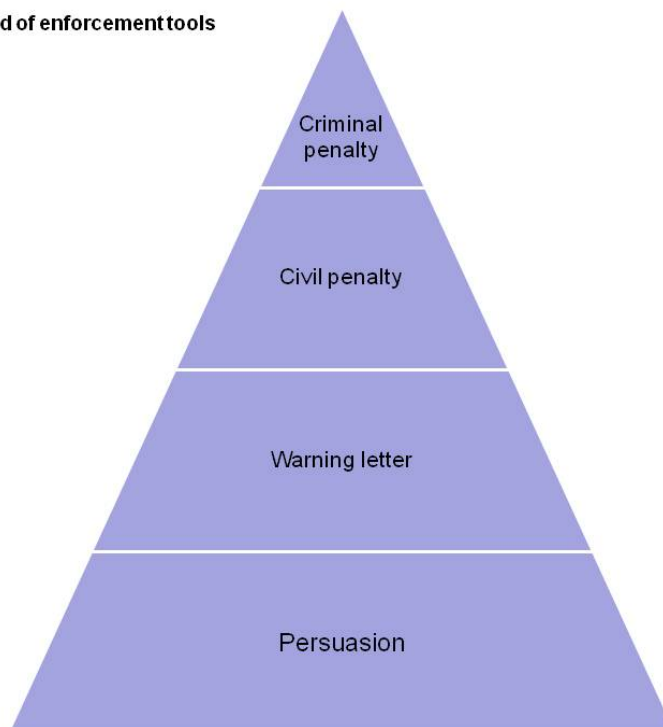


Figure 1: pyramid of enforcement tools

2.27 **We recommend that regulators should have a greater range of penalties at their disposal; specifically:**

- **Where non-compliance is minor** (e.g. minor impact on outcome or breach of process), and where this does not already happen, **we recommend that regulators should be allowed to give warnings and require faults to be put right.**

- **Where non-compliance is major** (i.e. major and demonstrable negative impact on outcome that endangers health, safety, and environment or is a repeat offence – as opposed to a breach of process - **we recommend that tough punishments are applied. We recommend there should be a robust and transparent system for determining what non-compliances count as ‘major’.** We note that the Health and Safety Executive now requires employers found guilty to repay the cost of inspections as well as any penalty¹⁵.
- **We recommend that a good way of applying proportionate penalties would be to use civil sanctions, a Macrory principle¹⁶, rather than criminal punishments (which should target the most serious cases).** Levels of civil penalties should not exceed penalties applicable under the criminal regime, and there should be no double penalty. Civil sanctions should be applied in a transparent fashion with appropriate checks and balances. There should be an element of cost for regulators in applying a civil sanction, e.g. the costs of taking a civil case to a civil court. We understand that discussions are underway in Government as to whether or not civil sanctions are desirable, but note that the Environment Agency, at least, is already able to use them. Clearly an important issue here is that civil penalties are as easy to apply for as any criminal process.

2.28 **We further recommend that:**

- **the UK seeks to renegotiate EU rules to incorporate the principle of proportionate penalties¹⁷; and**
- **industry endorse the approach of proportionate penalties – and apply peer and market pressure to develop high standards.**

Reduce and reform paperwork and process

2.29 Industry has told us that farm businesses, particularly micro-businesses, are mired in paperwork and process. We agree, although we accept that some is inevitable. Government and industry should jointly design processes so that they can easily be integrated into normal business practice. Government’s role is to reduce barriers and incentivise the right behaviour. Specifically, we recommend:

- using general rather than individual licences where possible (paragraph 2.30);
- introducing maximum response times and fixed decision points (paragraph 2.31);
- providing single sources of information (paragraph 2.32);
- a series of ways to reduce paperwork (paragraphs 2.33–2.40);
- making guidance as short as possible and provide a clear, succinct overview of how rules have changed (paragraph 2.41); and
- that Defra, its agencies and delivery partners produce a plan for reducing paperwork and process (paragraphs 2.42–43).

Introducing general licences where possible

2.30 Industry has complained about the cost and cumbersome procedures for applying/registering for highly specific licences and exemptions, particularly where these relate to activities that provide public benefits but that are tangential to the main farm business, e.g. disposal of hedge clippings. An alternative to specific licences is a ‘general (or standard) licence’. This would cover several activities which can currently be carried out under specific individual licences and exemptions. A general licence would enable farmers to legally undertake a series of activities by applying for a single licence, rather than a series of individual licences. This could reduce bureaucracy and cost – but would need to strike the balance between

¹⁵ <http://www.dwp.gov.uk/newsroom/press-releases/2011/mar-2011/dwp030-11.shtml>

¹⁶ R. Macrory (2006) *Regulatory justice: making sanctions effective. Final report.*

¹⁷ e.g. to avoid a recurrence of the situation experienced by the RPA on cross-compliance., In 2005, RPA adopted a light-touch approach to payment reductions for non-compliance, only to be subject to European Commission Audit criticism in 2008.

simplicity and the operator being aware of conditions to which they are legally bound. We are impressed by the approach of a general licence that has been introduced by the Environment Agency (EA) under the environmental permitting regime – and suggest we learn from it. For Defra, its agencies and delivery partners, specific licences and registrations should become the exception rather than the rule. General licences need to be clear in their conditions and to whom they apply. **To reduce burdens on the end-user, we recommend that Defra, its agencies and delivery partners should make a presumption in favour of general licences wherever legally possible.**

Introducing maximum response times and fixed decision points

2.31 Industry complains that Government is slow to respond or take decisions. Such delays and uncertainty adversely affect business planning. Within the context of customer service improvement (including the Government Standard for Customer Service Excellence¹⁸) we make two recommendations:

- Where Government has the freedom to do so (more likely in domestic rather than EU regulation, and where there is no obligation for the regulator to consult others), **we recommend that the Government commits to maximum response times.** We believe that the clock should start ticking once the regulator has received an application. Commonly, Government asks industry to respond within 42 days; we commend this as a starting point.
- Where processes are likely to be multi-stage, **we recommend that the regulator gives a commitment to take decisions at fixed decision points to allow all parties to consider whether to proceed or not.**

Introducing single sources of information

2.32 The *Regulators' Compliance Code*, published in 2007, recommends that “regulators should provide targeted and practical advice that meets the needs of the regulated entities”. Farming and food-processing businesses need clear information about inspection programmes and procedures so that they can assist by having the relevant evidence ready. Businesses also need a single contact point – such as the Environment Agency's National Customer Contact Centre – so that they do not get passed around between officials. **In the light of this, we recommend that Defra establishes a single access point to information on inspections (e.g. the Farming Theme of Business Link) and single customer contact points in each regulator.**

Reducing paperwork

2.33 If there is a single universal ‘complaint’ from farmers it is that there is too much paperwork (e.g. forms, guidance and requirements to write plans) and process (e.g. licensing applications). Almost all consultees identified ‘forms’ as the most burdensome and arduous aspect of any regulation. All complained that this process confines them to the farm office, rather than letting them run their businesses. **So we recommend that Defra, its agencies and delivery partners:**

- **develop a partnership approach to designing forms (paragraph 2.34);**
- **introduce new principles for collecting data (paragraph 2.35);**
- **review requirements on farmers to write plans (paragraph 2.36);**
- **move from paperwork to ‘digital by default’ (paragraph 2.37); and**
- **make better use of the Farming Theme of Business Link (paragraphs 2.38–40).**

A partnership approach to designing forms

2.34 Judging from feedback from the industry, we are not convinced that Defra, its agencies and delivery partners have a consistent policy of engaging working farmers in creating or redesigning forms (see

¹⁸ <http://www.cse.cabinetoffice.gov.uk/homeCSE.do>

paragraphs 5.06–07). **We recommend that with every new administrative burden, Defra and industry collectively engage a sample of ordinary working farmers to help design the form.**

Adopting new principles for collecting data

2.35 Many in the farming industry have told us that Defra, its agencies and delivery partners collect data unnecessarily and repetitively. We agree. We propose a number of principles to govern data collection (for details, see paragraphs 5.08–15). **Specifically, we recommend that:**

- **before any process is considered the question is asked – ‘do we really need this information?’;**
- **regulators comply with the Regulators Compliance Code by not collecting the same data twice where this can be avoided;**
- **regulators should make clear to farmers who their data is being shared with and offer farmers the opportunity to ‘opt in’ to data-sharing between Defra and its regulators;**
- **there should be a presumption that regulators share data except where they are not legally or technologically able to do so;**
- **regulators be sensitive to sectoral calendars when issuing requests for data;**
- **industry trade associations push the take-up of electronic means of data supply by its members; and**
- **regulators investigate alternative means of gathering data that do not impinge on farmers.**

Review requirement on farmers to write plans

2.36 Farmers spend much time writing plans. We are not convinced that this always contributes to outcomes. **We recommend that Defra reviews its rationale for requiring farmers to write plans (see paragraph 5.19).** Plans could instead be used as evidence under earned recognition (paragraphs 3.12–32).

From paperwork to ‘digital by default’

2.37 While we are aware that not all farmers currently have access to broadband, we endorse the Coalition Government’s new policy of ‘digital by default’¹⁹ and aspire to a digital future. We welcome steps by Defra, its agencies and delivery partners to move more services online, and the positive results that this has had (paragraphs 5.16–17). In the light of this, and explaining our reasoning in chapter 7, **we recommend that:**

- **Defra, its agencies and delivery partners aspire to create a comprehensive system of pre-populated forms;**
- **Defra, its agencies and delivery partners, and trade associations, encourage take-up of opportunities to complete ‘paperwork’ electronically as part of good business management practice;**
- **the Government sets a goal of 100% quality broadband access in rural areas;**
- **the Government and trade associations encourage farmers and food-processors to use online facilities, whether directly or through a third-party including call centres; and**
- **IT training for farmers should be a priority for training providers.**

Making better use of the Farming Theme of Business Link

2.38 We believe that Defra and the industry should make better use of the Farming Theme of Business Link, which now encompasses the service formerly known as Whole Farm Approach. We are aware that the development of any new functions will need considerable investment notwithstanding financially

¹⁹ In November 2010, Minister for the Cabinet Office Oliver Letwin announced that the Government “will make digital the primary channel by which [we] inform and transact with citizens and businesses. We will consolidate, and where possible close down, other more costly channels as we drive take-up of digital services.” This will ultimately move virtually all government services online and make them available through digital media.

constrained times. But we believe this a priority. **We are convinced that the Farming Theme of Business Link is the best vehicle to deliver our proposals on earned recognition and risk-based inspections as well as being the place for online applications and information.**

2.39 Digital solutions should replace not replicate traditional channels. For the Farming Theme of Business Link to work – and for Defra’s services to farming to become ‘digital by default’ – the take-up needs to increase massively from its current level (10% of farm businesses). This may involve offering incentives. We suggest consideration of the following:

- the main attraction for a farmer is the opportunity to provide evidence to regulators that lowers his/her likelihood of being inspected; (earned recognition, see chapter 3)
- general licences (paragraph 2.30) could be published on the Farming Theme of Business Link;
- those filing data online could benefit from a later completion date than paper returns (as for self-assessment tax returns); and/or earlier payments/approvals.
- those applying for permits online could benefit from lower charges.

2.40 If Defra agrees to invest further in the Farming Theme of Business Link, it will be key to increase take-up. **We recommend that:**

- **the Government makes it easy for farmers to find the Farming Theme, by improving the signposting of the Farming Theme within Business Link (e.g. through a link on the Business Link homepage); and**
- **trade associations take on the important role of encouraging take-up of Business Link among their members.**

Improving guidance

2.41 Regulation must be underpinned by clear and concise guidance. In paragraphs 2.18–19 we suggest that Government should invite industry to play a leading role in drafting guidance. But we also recommend that guidance should be as short as possible and where they are issued after changes to the rules they should provide a clear, succinct overview of how rules have changed. We give further details in paragraph 5.21–22.

Defra, its agencies and delivery partners should produce a plan for reducing paperwork and process

2.42 We are aware that Defra, its agencies and delivery partners have taken steps in recent years to improve Government service to its customers. Natural England, for example, through its Hampton Implementation Plan, delivered £3.9 million of admin burden savings. Both Natural England and Environment Agency have undertaken ‘customer journey mapping’²⁰. We suspect that we have barely scratched the surface of the interface between farmers and Defra, its agencies and delivery partners. We feel that Ministers would benefit from understanding this interface better within the context of customer service improvement (including the Government Standard for Customer Service Excellence²¹). While acknowledging resource constraints and the steps that Defra, its agencies and delivery partners have already taken to improve their interactions, farmers and Government would benefit from a plan to use available scope to rationalise these interactions. Everyone concerned would benefit from this plan being bold.

²⁰ Customer journey mapping places you in the shoes of the customer, from the point at which s/he comes into contact with an organisation to their point of exit with the service/product they wanted (a licence, an agreement etc.). This process enables identification of process improvement points and thus helps improve the way you do business with customers. Defra has undertaken a farmer customer journey mapping research, Natural England and the Environment Agency have deployed customer journey mapping.

²¹ <http://www.cse.cabinetoffice.gov.uk/homeCSE.do>

2.43 We recommend that Defra, its agencies and delivery partners, including the Food Standards Agency produce a coherent plan for Ministers of how they intend to further reduce and rationalise the process and paperwork for farming and food-processing businesses, with aim of improving efficiency and effectiveness. We recommend that the plan:

- is produced by the end of 2011;
- explains where paperwork and process cannot be reduced, and address ‘customer journey mapping’ where it makes sense to do so; and
- is based on the Task Force principles and recommendations elsewhere in this report.

Explore and embrace tools to influence farmer behaviour

Understanding farmers to influence behaviour

2.44 A functioning partnership between Government and industry will need a regulatory ‘stick’ to target major non-compliance, but **we recommend that Government and industry use insights from behavioural science to enable, encourage or persuade farmers and food-processors to contribute to achieving better outcomes.** This is true for both developing non-regulatory solutions and improving compliance.

2.45 Among other tools such as earned recognition, which is the subject of the next chapter – behavioural science can help an outcome-focussed future. Our key messages are that:

- not all farmers are the same. Defra’s own draft ‘segmentation’ of farmers identifies five broad categories of farms: in its terminology, ‘custodians’, ‘lifestyle choice’, ‘pragmatists’, ‘modern family business’ and ‘challenged enterprises’²². So a one-size-fits-all approach to communication will fail. Government and trade associations alike need to improve their understanding of farming industry needs, values, motivations, drivers and barriers to change. **We recommend that Defra further encourages the use of farming industry ‘segmentation’ in policy-making;**
- if farmers understand the logic and benefits of a particular outcome, they are more likely to willingly comply;
- influencing behaviour is often about maintaining or strengthening existing behaviour, rather than attempting to change it;
- if Government better understands those it seeks to influence, it will develop a better, more effective regulatory framework that achieves objectives without imposing unnecessary burdens;
- what we want of farmers must be prioritised. If you ask a farmer to do 15 things, you stand a good chance of them being done. If you ask a farmer to do 150 things, most likely nothing will be done;
- Defra should continue to invest in farmer-orientated behavioural research. We believe the new ‘centre of expertise on influencing behaviours’ can bring a wider understanding of businesses to help Defra, its agencies and delivery partners achieve a new regulatory culture;
- Government and trade associations alike should work with farmers so all can understand the farming, business and personal reasons for specific practices.
- **we recommend that regulators and industry representatives partner their approach to farmers and food-processors.** This collaboration could take several forms. Regulators, trade associations and industry bodies could, for example, jointly run training sessions for farmers. Or a trade association might invite a regulator to provide quality assurance on its own training scheme.

²²[http://www.defra.gov.uk/evidence/statistics/foodfarm/enviro/observatory/research/documents/ACEO%20Behaviours%20Discussion%20Paper%20\(new%20links\).pdf](http://www.defra.gov.uk/evidence/statistics/foodfarm/enviro/observatory/research/documents/ACEO%20Behaviours%20Discussion%20Paper%20(new%20links).pdf)

2.46 Farmers, especially those who manage alone, can see regulation as a one-way process, with constant pressure on them to keep up to date with a broad range of changing regulatory requirements. This can cause great stress, as some individuals struggle to find time to read and understand each new regulatory requirement or change and worry that they ‘will miss something important’, that may result in a reduction in payments or even prosecution. **This feeling of ‘guilt’ is behind much of farmers’ worries about inspections and can be compounded by heavy-handed or insensitive enforcement. It is essential that full account is taken of the cumulative and individual impact of regulation, guidance and enforcement.**

2.47 Figure 2 sets out a simplified compliance model. The four bubbles represent businesses at different levels of compliance. We suggest how regulators might tailor their approaches to these four groups of businesses:

- for businesses in the top two bubbles, regulators should aim to maintain performance, use them as exemplars and adopt a light-touch approach;
- for businesses in the bottom two bubbles, regulators should aim to secure compliance, e.g. through intensified advice, guidance and/or support;
- businesses that refuse to comply should face some form of sanction to encourage future compliance and ensure others do not think that ‘compliance is optional’ nor suffer from ‘free-riders’;
- the severity of non-compliance and previous compliance history are important in factors to inform how to respond to non-compliance; and
- our approach of ‘earned recognition’ (described fully in chapter 3) will help regulators place businesses in their place on this diagram.

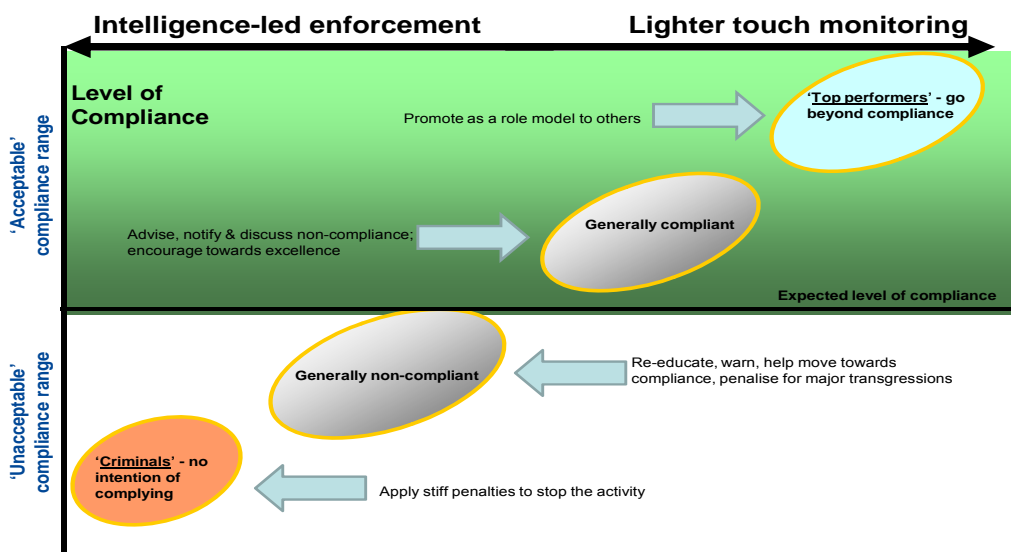


Figure 2: possible compliance model

Engaging in the EU: more, earlier and in partnership

2.48 Three-quarters of Defra’s regulations have European Union origins. Whatever one’s view of the EU, it makes sense for the UK to aim to make EU legislation fit for purpose with minimal costs and burdens. This means effective engagement with the Council of the European Union, the European Commission and the European Parliament (hereafter called ‘the European institutions’). We are under no illusions that making changes to EU procedures, practice and legislation is a very tough job. It will need determination, resource, skilful handling and alliance building. This applies to our recommendations throughout this report for

amendments to specific EU regulatory frameworks as much as to our wider recommendations below. We make no recommendations lightly. But the UK's track record in delivering change in Europe gives us some confidence of a favourable outcome. There is more chance of making change by leading the agenda rather than reacting to it.

The Coalition Government's guiding principles for EU legislation

2.49 We endorse the Coalition Government's *Guiding Principles for EU legislation*, as announced in December 2010, particularly:

- the principle that '*the UK should participate early in the EU policy-making and legislative process*'. Even at a time of financial cutbacks, **we believe Defra, the UK Permanent Representation to the EU, Cabinet Office and Better Regulation Executive should allocate more specialist resource to engagement, not less**. This resource should relate both to policy teams negotiating on specific dossiers and those looking after the general strategic approach to influencing the European institutions. **There may also be benefit in integrating a better regulation module into training in EU negotiations.**
- the principle that '*measures to implement EU legislation should come into force on, but not before, the specified transposition deadline unless there are compelling reasons to do otherwise*'. We endorse this for competition reasons, although note that where regulations would make savings (e.g. the forthcoming EU regulation to allow the use of carbon dioxide to slaughter chickens; paragraph 8.40), early introduction may be sensible. But we are concerned that unrealistically short transposition and implementation timescales inhibit competitiveness. **We recommend that the UK argues to the European institutions that it can help industry better comply with regulation by agreeing realistic transposition and implementation timescales. We recommend that timescales should not be traded off against other elements as part of the negotiation end-game.**
- the principle for '*transposed EU law to include a statutory duty for Ministerial review every five years, and for this to involve Government consulting actively with businesses most affected by the regulation*'. There is no point in retaining legislation that imposes burdens but no longer contributes to outcomes. **We recommend that the Government goes further and presses EU partners to introduce post-implementation reviews or sunset clauses as standard in EU legislation, where this is not already the case. We recommend that the European Commission should lead the review and should consult end-users in doing so.**
- the policy that '*the UK should encourage the European Commission to recognise and propose alternatives to regulation, drawing on behavioural science insights*' (for which see paragraphs 2.42–43). We think the UK could go further. **We recommend that the UK should encourage the institutions to shift their focus from process to outcomes. We recommend that the UK presses the European institution policy-makers to ask themselves the same questions that we suggest Defra policy-makers ask (paragraph 2.07).**
- the principle of '*ending the gold-plating of EU rules, so that British businesses are not disadvantaged relative to their European competitors*'. We endorse the Government's principle of 'copying out' EU legislation when transposing it, except when doing so would adversely affect UK interests, e.g. by putting UK businesses at a competitive disadvantage. While we acknowledge that there are situations where good practice may contribute more to desired outcomes than EU minima, we are against gold-plating in regulations as a solution to public concerns. We welcome the Health and Safety Executive's approach of using 'good practice guidelines' rather than 'best practice guidelines' to avoid gold-plating. It is only right that Ministers consult those affected by an intention to gold-plate. **In coming to a decision, we recommend that Ministers consider whether gold-plating:**
 - **would place industry in an uncompetitive position (as we fear from the Poultrymeat regulations);**

- would simply ‘export’ the problem overseas; and/or
- could be provided by the marketplace rather than legislation (e.g. farm assurance standards).

Where Ministers decide not to use copy-out, we recommend that they publicly consult industry and other stakeholders with their reasoning.

Using the European Commission’s *Communication on smart regulation* to lead change

2.50 We recommend that the UK Government use the European Commission’s *Communication on Smart Regulation*²³ to help lead regulatory change in Brussels. Specifically, we recommend that:

- the Government should collaborate with the European Commission’s Secretariat General to push the other European institutions to incorporate the European Commission’s *Communication on Smart Regulation* into their policy- and law-making;
- the Government should argue that smart regulation is key to the European Commission’s *Europe 2020* strategy (‘smart, sustainable and inclusive growth’). Above all, we believe this must apply to negotiations on the post-2014 Common Agricultural Policy;
- as a matter of continuing policy, the Government should press the European Commission to simplify existing legislation and ensure that this results in improvement to end-users. The European Commission’s recent *Communication on the Common Agricultural Policy (CAP) 2014-2020*²⁴ is an example of an admirable ambition (‘to continue simplification of the CAP’). But it is also an opportunity missed, as the Communication does not mention how to do so and does not assess how its proposals will affect farmers. We are concerned at the complexity of proposals to green Pillar 1, for example.

Placing the end-user at the centre of EU policy-making and regulation

2.51 We recommend that the Government lobbies European institutions to put end-users at the heart of how interventions are chosen and developed. (In this context, we consider ‘end-users’ to be those whose practice is directly affected by the policy or recommendation.) Specifically, we recommend that:

- the Government uses the Council of the European Union to hold the European Commission’s Impact Assessment Board to account in its role of assessing European Commission impact assessments. It should focus on the impacts on micro-businesses;
- the Government presses the European institutions to look at cumulative burdens on industry. This might comprise an equivalent of the UK’s Better Regulation Executive within the European Commission and a European Parliament Standing Committee with responsibility for smart regulation;
- the Government, working together with the Council of the European Union and European Parliament, presses the European Commission to deliver on its commitment to ‘think small first’ when developing policy that affects businesses. It should examine cross-DG issues (e.g. inspections) as part of the ‘fitness checks’ unveiled by the European Commission’s *Communication on Smart Regulation*;
- the Government presses the European Commission in particular to engage more thoroughly and at an earlier stage in policy development with industry practitioners likely to be impacted by the proposed problem and solution; and
- trade associations strengthen their engagement with European institutions. This involves making alliances with equivalent organisations from other Member States. It also involves Defra regularly

²³ http://ec.europa.eu/governance/better_regulation/key_docs_en.htm

²⁴ http://ec.europa.eu/agriculture/cap-post-2013/communication/com2010-672_en.pdf

inviting industry on lobbying visits to Europe. In exchange for a seat at the table, industry will need to demonstrate that it has a shared approach to outcomes.

How the European Commission can improve compliance

2.52 All too frequently, Member States implement EU legislation in good faith, but, in the view of the European Commission, get it wrong. A topical example is the producer organisations component of the EU fruit and vegetable regime (see paragraphs 9.04-20); another is changes to payment schedule for Environmental Stewardship schemes. Such situations are disruptive and undermine partnership. **We recommend that the Government:**

- **explores with the European Commission how they might better take responsibility for helping end-users comply with EU legislation;**
- **presses other Directorates General to follow DG ENV's compliance promotion initiative²⁵. This may involve questioning European auditors and their approach on disallowance decisions; and**
- **encourages the European Commission to work with industry and Member States to draft guidance on implementing EU law.**

Improving inspections required by EU law

2.53 The European Commission can do much to improve the effectiveness and efficiency of inspections, although we acknowledge that this will need legislative changes. We believe that, in a risk-based inspection regime, random inspections are a relatively poor use of time. For example, of the 1% of producers checked under cross-compliance, one in five must be selected at random. **We recommend a better balance between risk-based and random inspections. This means that the European Commission should review its use of breach rates in calculating the size of samples for inspection regimes.**

²⁵ http://impel.eu/wp-content/uploads/2010/01/Communication-on-implementing-European-Community-Environmental-Law-2008-com-2008-773_en.pdf

Chapter 3 Improved inspections including through earned recognition

Changes should be made to the arrangements for many inspections to improve the way they affect farmers and regulators.

We recommend adoption of the approach of ‘earned recognition’. This is about giving official recognition to the effective efforts made by individuals and businesses in understanding legal requirements and getting things right. Adopting and applying this principle of earned recognition should reduce the burden on business and should help regulators to make risk-based decisions and to make better use of their expertise. This does not always need changes to regulation. But it does require regulators to remove duplication and to adopt changes in the way that inspections are planned and organised. In particular, targeting inspection by using earned recognition in risk assessment to reduce the inspection burden on low risk farmers and business.

Single Payment Scheme (SPS) cross-compliance checks are a priority area for implementing earned recognition.

Inspections

3.01 Ministers asked us to consider “disproportionate, over-complex implementation and enforcement with a view to changing to a simpler, empathetic, risk-based and outcome-driven approach”. Nowhere are these important principles shown more clearly than in concerns about inspections. That there is an issue was clear from the number of times that inspections were raised with us when we asked farmers to tell us their concerns

“[Farmers] have made clear their concern with the time taken up by inspections as a result of overlapping inspections by central Government inspectors, local authority inspectors and private sector audits. Poor co-ordination, duplication and frequency of inspection are systemic problems. Livestock farmers highlight repeat inspections of animal identification and movement records as a major issue. Little regard is given to private sector compliance (e.g. farm assurance) which is poorly understood by regulators generally.”

National Farmers’ Union

3.02 Mostly we heard concerns about the burden of inspections made as part of an annual programme of checks on the SPS and cross-compliance. However, the concerns are wider ranging. We have many inspections for a multitude of reasons. Farmers often see them as intrusive, time-consuming, heavy-handed, burdensome, unsympathetic, uninformed about farm-business practice, and intended to catch

them out (e.g. on process as well as outcome). Farmers also believe there is duplication between inspections. It was also clear that some farmers make little distinction between the demands of official inspections and third-party checks (e.g. by assurance bodies).

As an example, this is how one livestock farmer reported duplications of inspections on livestock farms²⁶:

“Dairy hygiene – FSA (Animal Health), RPA cross-compliance inspection, Farm Assurance by milk buyer and FABBL
 Cattle movement records – Trading Standards and RPA/BCMS
 Feed stores and on farm mixing of feeds – RPA, Trading Standards and Farm Assurance
 Sheep movement records – Trading Standards, RPA, FABBL
 NVZs – RPA and EA
 Public rights-of-way – RPA and Local Councils
 SSSIs – NE and RPA
 Medicine Records – RPA and Farm Assurance”

Our vision for change

3.03 Individuals and businesses are responsible for complying with regulations. Many regulatory regimes have associated official control requirements to monitor compliance. Many businesses prefer the certainty and level playing-field provided by clear regulation and consistent official inspection. However, we question the need for inspection regimes that are not firmly risk based or proportionate to the harm that would result from non-compliance. There seems little value for the taxpayer, regulator or business in regular inspection of regularly compliant or low risk premises. Regulators may be required by law to carry out planned or programmed inspections as a percentage check across a business sector (such as SPS claimants). We accept there must be accountability for public money, and that regulators require oversight of compliance, especially where the risk from failure is high. However, we think that significant improvements can be made, and new ways of working introduced, without compromising standards and regulators’ legal obligations. In this context, **we would like to see reconsideration of the EU requirement for unannounced visits, so as to achieve a better balance between surprise and business disruption.**

Principles for inspection

3.04 To improve inspection and help the Government end what it calls “the culture of tick-box regulation”, we recommend that the following principles should apply to farms and primary processors:

- there should be as few inspections as are necessary to meet obligations and maintain standards;
- inspection must be risk based and targeted;
- regulators should provide a clear explanation of their inspection programme;
- regulators must make full use of all evidence available to them (paragraphs 3.13, 3.23) to implement earned recognition;
- regulators must have greater confidence in industry to meet standards;
- inspections should, where possible, fit the business calendar (e.g. not during lambing);

²⁶ This is a verbatim account. Acronyms are as follows: FSA = Food Standards Agency; RPA = Rural payments Agency; FABBL = Farm-Assured British Beef and Lamb; BCMS = British Cattle Movements Service; NVZs = Nitrate Vulnerable Zones; EA = Environment Agency; SSSIs = Sites of Special Scientific Interest; NE = Natural England.

- inspections should fit with the way that business works and limit requirements on farmers to what is reasonable;
- adequate notice should be given before an inspection (unless the law requires unannounced checks);
- where possible checks should be made on a sample basis: e.g. checking perhaps only 10% of cattle during cattle identification inspections or only selecting certain criteria to be checked during a cross-compliance visit. A full check should be carried out only where non-compliances are found;
- to avoid multiple visits, an inspection should cover all issues for which that regulator is responsible;
- regulators must share information, as far as possible, to improve prioritisation, reduce frequency of visits and improve coordination, e.g. animals should only have to be gathered once for inspection purposes; and
- inspectors must understand the business and be aware of any associated assurance scheme coverage;
- these principles should be applied across the sector, e.g. livestock markets.

Organisation of regulators

3.05 We received a number of suggestions for how Government regulators might be differently structured. We have not examined these ideas in detail, nor undertaken an assessment of costs and benefits. We recognise the adverse impact of structural upheavals for organisations and their customers and we are not persuaded of the case for a single Government farming inspectorate.

3.06 At present, four Defra agencies and delivery partners have a role in cross-compliance inspections: Animal Health and Veterinary Laboratories Agency (AHVLA), Environment Agency (EA), Natural England (NE) and the Rural Payments Agency (RPA). We believe that this plethora of bodies, in itself, does not help outcomes and potentially imposes too many inspections and too many inspectors on farmers. We are aware that EA is in the process of passing over their cross-compliance inspections to the RPA. We welcome this, but think that Defra should go further. **We recommend that the CAP cross-compliance inspectorate should be confined to RPA and AHVLA, ideally with the whole process being led by RPA to reduce the potential for multiple official inspections. In the longer term, we recommend that RPA carry out all visits, with input from AHVLA as needed.**

3.07 We believe that the inspection process for the SPS can be improved considerably. In large part this can be achieved by having a simpler regime to inspect. But it can also be improved and be less costly by maximum use of sampling and remote sensing. Moreover, it can be more fairly applied by better use of risk-based intelligence. All of these issues are covered in our comments on the SPS (see paragraph 7.24).

3.08 We note that some local authority inspections do not count towards the statutory minimum checks required by EU regimes and are effectively additional to those needed to demonstrate compliance. **We recommend that the Government ensures that local authorities are not carrying out inspections for the same purpose as another regulatory body. In the case of such duplication, only one body should carry out the inspection.** We believe this will reduce the likelihood of farmers having more than one inspection of the same issue. We are aware that this may place a greater burden on AHVLA but believe that a risk-based, targeted inspection approach based on earned recognition should mean fewer visits and better targeting.

Enforcement and emergency capacity

3.09 Changes to the organisation of inspections do not mean a reduction in enforcement. Planned or programmed inspections must not be confused with evidence based visits (where an inspector visits to investigate, following a report or complaint, because there is reason to believe that there is non-

compliance). There cannot be any compromise on this. **We recommend that regulators and local authorities continue to work together to pursue enforcement.** It is important that there is sufficient capacity and expertise to deal with those who are not compliant and with the potential impact of their non-compliance on others. Inspectors, whether from regulators or Local Authorities, are an essential resource for dealing with non-compliance and emergencies (e.g. disease outbreaks or contamination incidents) and changes should not put this capacity at risk.

Inspector behaviour and skills

3.10 Farmers tell us that some inspectors display little understanding of farming. This makes farmers reluctant to trust the inspector's judgment. For industry to have confidence in regulators, inspectors must be professionally competent. It is reasonable to expect anyone inspecting a farm to have had relevant training. There are also advantages in having inspectors professionally qualified. In such a scenario, a routine on-farm inspection (i.e. other than in the case of inspections driven by emergency or intelligence) would only be valid if the inspector could demonstrate a relevant competence based qualification or equivalent, or current industry-endorsed Continuous Professional Development activity. We believe that there are roles here for both Government and trade associations. We welcome the EA's movement towards more sector-specialised staff on its front line. **We recommend that the Government and trade and professional associations jointly develop new arrangements to ensure that inspectors and assessors have appropriate training, and understand the business sectors in which they operate.**

A farmer reported he was in the middle of TB testing his cattle when the RPA inspector arrived unannounced. The RPA inspector demanded he stop TB testing so he could complete his inspection. The farmer then had to go to his office to find more accurate maps because the RPA inspector had not been given the right up-to-date maps. The AH vet demanded they continue with the TB testing or he would breach requirements and suffer a penalty. The farmer then had to contact neighbours to help with the TB testing resulting in further cost involved in paying for their time.

National Beef Association

3.11 A farm is often also a home and not just a place of business and we believe that inspectors should have appropriate personal skills to adapt their behaviour. Some farmers are used to working alone and many are not always good at talking about their concerns; inspectors should understand the effect of their behaviour and be aware that, in extreme circumstances, inspection or enforcement action may contribute to circumstances that affect an individual's ability to carry out their business safely. Inspectors should be able to call on professional support when needed.

Earned recognition

3.12 The proposals in paragraphs 3.03–11 can and should improve inspections. However, we believe there is one over-riding principle, which, if adopted fully, would make a dramatic difference to the interface between the public and the private sectors This is applying 'earned recognition' to regulatory regimes.

3.13 So what is 'earned recognition'? Earned recognition is using third party information and other personal evidence to assess risk and therefore the need for the state or its agents to inspect. It may be applied in several ways:

- whole industry recognition, where a regulation can be replaced with a voluntary initiative;
- accepting that members of accredited assurance schemes are low risk and reducing inspection frequency in recognition of this;
- allowing individuals to record their understanding of, and the action they have taken to meet, regulatory requirements (allowing them to be seen as regularly competent and low risk); and
- high-performing businesses meeting high standards might be able to seek alternatives to regular official inspection.

3.14 The approach of earned recognition is not new, but although there is evidence that some regulators are moving in the right direction, it is clear that this has largely gone unnoticed by farmers.

Principles of earned recognition

3.15 Earned recognition has some defining principles. These are:

- the competent authority (Defra, EA, FSA, etc) maintains ultimate control for compliance and enforcement;
- the competent authority determines the nature of the earned recognition for each sector;
- recognition takes account of the widest range of supplementary information;
- trust and a presumption of competence based on accredited or other recognised evidence that builds a picture of the risk of an individual or business;
- low-risk or regularly competent individuals or business should not usually be inspected other than as part of a random selection of a planned inspection programme (or where non-compliance is suspected). We recognise that some EU regulations require authorities to carry out a certain level of visits and physical checks; and
- clarity about how a regulator takes account of supplementary evidence (where possible, a regulator's risk assessment should include a 'desktop' analysis of available information to consider whether a visit is necessary and to limit what has to be inspected during a visit). Supplementary information might be taken into account to determine the appropriate response to a complaint.

3.16 Recognition is 'earned' because it rewards the effective efforts of individuals or businesses to improve knowledge, competence or standards. It is not a blank cheque, as it cannot be taken as a guarantee of compliance. But recognition of supplementary evidence moves the relationship between regulator and business to one of increased confidence and trust. Importantly, one of its features must be that it drives improved performance through the incentive of reduced likelihood of inspection. **We recommend that the principles of earned recognition become central to Government regulatory policy-making and implementation, so wherever possible individuals/businesses have the opportunity to provide evidence and benefit from a reduced or less costly regulatory burden.**

Earned recognition in practice

Whole sector competence

3.17 When considering the need for a new regulation or changes to existing measures, the capacity of the sector to deliver standards through earned recognition and without regulation must be considered.

Accredited assurance schemes

3.18 Business already invests in third-party checks that verify, through regular independent and accredited inspections, that members are meeting stated standards that, as a minimum, reflect regulatory requirements. We believe that scheme membership should serve as an indicator that the participant has a good level of understanding and competence. It makes sense that regulators should take account of the evidence of this commitment when considering risk.

3.19 To be used most effectively, information about assurance scheme membership should be part of a regulator's risk assessment. Subject to agreement with the assurance scheme owners and their members, the regulator should enter membership information regularly into their risk model. For regulators to have confidence in this information, it is essential that they use data only from third-party assurers that have demonstrated to the competent authority that they meet the standards for specific regulatory arrangements. Such service providers usually have accreditation by a recognised body (e.g. the United Kingdom Accreditation Service) which enables confidence in independence and competence. Assurance scheme membership and subsequent low-risk status does not mean that there is no likelihood of inspection, as:

- some regulations require inspection of a minimum percentage of premises each year, including some randomly chosen premises. This random element is usually the smaller part but it is important to provide a measure of performance across the whole sector; and
- other regulations require inspection of all premises. Membership of an accredited assurance scheme may significantly reduce the frequency of these inspections.

3.20 The regulator should not need to see the details of an individual assurance scheme audits. These should usually remain a commercial matter between the scheme member and the scheme provider, unless other arrangements are agreed between a scheme provider and the regulator. **We recommend that regulators, industry and assurance providers review current arrangements and agree a list of accredited and other schemes that provide assurance against specific official controls.**

3.21 We strongly welcome action by regulators to take account of third-party evidence, e.g.:

Animal welfare

Defra and AHVLA are considering with Assured Food Standards (Red Tractor) and other voluntary third party assurance schemes how to make better use of information from assurance to assess risk, with the intention of ensuring that animal welfare inspections are better able to identify potential problems and, as a result, also reducing the likelihood of inspection for low risk farmers in the cross-compliance inspection programme.

Environmental Permitting Regulations – Integrated Pollution Prevention Control

Since April 2010, large but low-risk/high-performing pig and poultry farms can be checked by certification bodies auditing under Assured Food Standards instead of by EA. This reduces the number of on-farm inspections and saves money on EA fees. The EA will normally only visit these farms once every three years instead of twice-yearly. We think that this is an excellent example of earned recognition, with fewer inspections and no diminution of outcome. Indeed, to the contrary, the approach drives excellence.

On-farm dairy hygiene

FSA has consulted on proposals to address the duplication of on-farm dairy checks by AHVLA Dairy Hygiene and Assured Food Standard audits. FSA propose that dairy farms producing raw milk for processing will be subject to a routine official hygiene inspection at a minimum frequency of 24 months except where the dairy farm has current Assured Dairy Farm membership. Members of this scheme will be subject to routine official hygiene inspection at a frequency of 10 years. The FSA intends to implement changes by summer 2011.

Medicines in animal feed

The Veterinary Medicines Directorate and its Animal Medicines Inspectorate (AMI) are working with the Agricultural Industries Confederation to incorporate AMI requirements for safe application and use of medicines in animal feed into the Universal Feed Assurance Scheme (UFAS) codes of practice and inspection regime. This should allow UFAS auditors to carry out some checks and mean fewer inspections by AMI of UFAS participants.

Individual and business evidence

3.22 Individuals and businesses should have the opportunity to voluntarily provide regulators with additional information that tells the full story of their checks and credits. Regulators can use this information to assess risk and the need for on-farm inspections.

3.23 This further information paints a picture of likely competence and risk, by giving an indication of the knowledge and standards of that individual or business. It might include a declaration that the individual/business has in place some or all of the following:

- online records or plans required by regulation (e.g. herd book/flock register, soil protection review or manure management plan);
- non-statutory online records or plans (e.g. Crop Protection Management under the Pesticides Voluntary Initiative);
- membership of accredited or other farm-assurance schemes;
- membership of other assurance schemes that can apply to farms (e.g. British Agro-Chemical Supply Industries Scheme (BASIS), Fertiliser Advisors Certification and Training Scheme (FACTS));
- membership of voluntary schemes, such as Entry Level or Higher Level Stewardship;
- professional qualifications;
- training and continuing professional development;
- farm-health, environment and other management plans; and/or
- risk-assessment business management reports (e.g. provided by an insurance company).

3.24 Sharing and using this information will mean a major change in the relationship between regulators and the regulated. The change must be voluntary. It should be neither an invitation to the state to demand additional information nor an obligation on individuals to provide information. Instead, it is an opportunity for farmers and regulators to work together to get the best possible picture that enables inspections to be effective and individuals to be trusted to meet standards while retaining the back-up of official checks. There should not be a restriction on the evidence that might be made available, but it makes no sense to provide information that cannot be verified or places unreasonable demands on regulators in taking it into

account. **We recommend that regulators and industry organisations consider an issue-by-issue list of information that would be appropriate for guiding risk assessment.**

3.25 This arrangement will:

- gather evidence in one place and improve regulator knowledge and understanding of a business;
- supplement, where possible, the regulator's risk model and provide a further check on risk status and the value of an official inspection;
- if the farmer chooses, show where plans (e.g. the manure management plan under the Nitrate Regulations) are kept electronically so that the regulator can read them; and
- if the farmer chooses, state which records are kept electronically, so that, where appropriate, the farmer and regulator can agree to check those records and plans to remove the need for a visit, or to prepare for a visit and reduce demands on the farmer's time

Alternatives to official public-sector inspection

3.26 In paragraphs 10.08–22, we explore an alternative option of designating commercially operated control bodies to carry out official controls in the meat sector.

Fairness and equal treatment

3.27 Earned recognition is the opportunity for an individual or business to provide information to help the regulator understand their risk/competence. We are clear that this does not mean that those who are not members of a scheme or who choose not to provide other information must automatically be regarded as high risk and a priority for inspection. By their nature and operations some farms may be low risk, and they can also earn recognition through a history of satisfactory official inspections.

Information sharing

3.28 Data sharing and protection must be agreed between all parties to allow the most efficient use of information. **We consider that the Farming Theme on Business Link (paragraphs 2.38–40) offers the best practical way for farmers and regulators to share earned recognition evidence (paragraph 3.22–25), and strongly recommend its development to this end.** In practical terms this should be done using an online tool, such as a webpage accessed from the Farming Theme, which allows farmers to record and communicate evidence in an efficient and intuitive way. The Farming Theme on Business Link already provides the necessary online presence, identity management and security protocols into which the proposed earned recognition tool can be integrated. The number of farmers accessing services via the Farming Theme is steadily increasing, so it makes good sense to house the earned recognition tool within an online channel that farmers use and understand. Strengthening the Farming Theme would appear more efficient and effective than creating a new resource.

Inspections where earned recognition could apply

3.29 **We recommend that regulators consider all current farm inspections to assess whether there is close alignment between official inspection and third-party schemes with a view to addressing duplication and adopting the principles of earned recognition.** We have listed some candidates for early consideration below. This list is neither complete nor exclusive. We encourage regulators to seek every opportunity to develop earned recognition to help them deliver effective official controls

- **SPS cross-compliance.** RPA and AHVLA should agree with accredited assurance standard owners and industry bodies how to take assurance scheme membership into account in their risk models and annual inspection plans. This discussion should build on the work already being done by Defra, AHVLA and assurance schemes to build membership of welfare assurance schemes into the risk model for animal welfare checks. This may not reduce the overall level of inspection, as this is set in EU law²⁷, but it should reduce the chance of a low risk farm being chosen for non-random inspection. We have set out in Annex 3 how cross-compliance and some other inspection regimes currently overlap with checks made under assurance schemes.
- **On-farm dairy hygiene inspection.** We welcome the FSA's progressive proposals to adopt earned recognition to reduce inspection frequency for premises that are members of Assured Food Standards. FSA should consider the value of a 10-year cycle of official inspection for all premises as it may be sufficient to rely on accredited assurance scheme information supported by spot checks to maintain standards.
- **National Control Plan – salmonella in poultry.** Defra and AHVLA should consider opportunities for the competent authority to reduce frequency of official visits by making greater use of information and checks carried out by the business or under assurance schemes.
- **The Poultrymeat (England) Regulations 2011.** We wrote to the Minister on 31 October 2010 drawing attention to the disproportionate inspection regime that these EU-derived regulations would impose on some producers (see Annex 2). We acknowledged the efforts made by Defra and the limited opportunities offered within the regulation and offered Task Force assistance to find a solution. We regret it was not possible to progress this within the life of the Task Force. We recommend that Defra should pursue a solution based on earned recognition that draws on the overlap of official inspection and the two main poultry assurance schemes.
- **Animal by-products.** AHVLA and industry should consider opportunities to use earned recognition to reduce frequency of official visits to check incinerators.
- **Feed and food supply chain.** We recommend that regulators consider membership of trade assurance schemes (e.g. Feed Materials Assurance Scheme [FEMAS], Trade Assurance Scheme for Combinable Crops [TASSC], Universal Feed Assurance Scheme [UFAS]) when planning or considering inspections of measures covered by those schemes.
- **Integrated Pollution and Prevention Control (IPPC).** EA should consider opportunities to extend checking by accredited certification bodies to other sectors, e.g. feed.

Recommendations made in other chapters

- We believe that the Gangmasters Licensing Authority should move its inspection regime to a more targeted, risk-based approach using the principles of earned recognition (paragraph 4.53).

²⁷ EU Council Regulation 1122/2009 laying down detailed rules for cross-compliance [and other matters] requires that 5% of applicants should be on the spot checked for eligibility although remote sensing can be used. Of these, 20-25% should be randomly selected. At least 1.0% of applicants should be inspected for cross-compliance purposes, of whom 20-25% should be randomly selected.

- The IPPC Farm Assurance Scheme is an exemplar for other forms of ‘earned recognition’. We recommend that if the scheme shows continued standards of compliance, the EA should consider further significant reductions in inspection frequency (paragraph 6.76).
- We recommend greater use of earned recognition in respect of meat hygiene controls and in particular moving to commercially operated control bodies to undertake certain official controls (paragraph 10.16).
- Import controls on high risk products: FSA should work with trade bodies, ports and designated laboratories to minimise delays of products produced to internationally recognised standards (paragraph 10.45).

Recommendations to assurance and other schemes

3.30 We believe that there is a strong case for earned recognition and that evidence from accredited assurance schemes can be a major contributor to realigning the relationship between business and regulators. However, it was clear from the evidence presented to us by farmers that assurance and other schemes face the same criticisms as those of official inspections: that they can be heavy-handed and burdensome; that auditors do not understand the business; that there is duplication between audits; that failure can comprise simple process errors; and that there is doubt whether a commercial audit can be truly independent.

3.31 **We recommend that third-party assurance schemes: ‘keep it simple’; ask what is really needed and leave out what is superfluous; use language the farmer understands and keep paperwork short and simple.** The process of culture change is one that should apply across the board. Working to the same principles will help strengthen partnership between official and commercial organisations. It would be completely unacceptable to reduce the state burden, only to see it replaced by a proliferation of burdensome third-party schemes. This message must be understood across the whole supply chain.

Chapter 4 Business and management

We recommend that:

- the National Planning Policy Framework adequately reflects the need for productive, sustainable farming, the sustainable intensification of agriculture and the positive contribution to local communities and economy that can be made by agriculture;
- the permitted development and prior notification thresholds for agricultural buildings are increased;
- polytunnels and on-farm winter-fill reservoirs are added to the General Permitted Development Order, with specific criteria limiting their use;
- measures be taken to increase the supply of seasonal labour, including adapting the benefit system to reduce financial disincentives for the unemployed to undertake seasonal work, and introducing a new Seasonal Agricultural Workers Scheme;
- the gangmasters licensing system is improved by ensuring greater use of targeted inspections and enforcement, clarifying current guidance and refocusing external communication;
- the Department for Transport review and amend the current Road Vehicles (Construction and Use) Regulations to reflect the needs of modern farm machinery;
- farmers remember the Health and Safety Executive message “Make the promise: come home safe” and increase their professionalism, awareness of and training in health and safety; and
- Defra invite the Tenancy Industry Reform Group to undertake a review of the Agricultural (Maintenance, Repair and Insurance of Fixed Equipment) Regulations.

4.01 A number of regulations and processes apply to all businesses, regardless of industry. We address those regulations that give farmers particular concern or which are disproportionately burdensome for agricultural businesses relative to other businesses. We examine the regulatory issues that have particular impacts on agricultural businesses: planning, labour regimes, transport, health and safety and tenancy issues. As we make clear in paragraph 1.24, we do not address other generic business issues, such as pensions, paternity pay, default retirement age, and returns to the Office of National Statistics.

Planning

4.02 We live in a changing environment – climate change, population growth, economic cycles, market developments and globalisation – within which Defra seeks to encourage more sustainable food production and increase the competitiveness and resilience of the farming and food industries. To achieve this, it is essential that there is adequate provision for farming and food-processing businesses to develop and make the best use of farming methods, infrastructure and technology. Planning regulations must allow farms to

adapt, innovate and change while maintaining environmental outcomes. Within Whitehall, the Department for Communities and Local Government (DCLG) leads on planning.

4.03 Infrastructure such as polytunnels and crop covers extend the growing season by up to four months and thus increase the potential, competitiveness and sustainability of a business. The same applies to winter storage reservoirs, poultry and pig developments, packing houses, grain stores, seasonal workers' accommodation, renewable energy operations and glasshouses. This agricultural infrastructure also offers local benefit: unfortunately, this is not routinely recognised by planners. Profitable farm or food-processing businesses contribute to local growth and provide locally grown food for a longer period in the year. New infrastructure can also offer beneficial environmental impacts such as energy efficiency, and reduced use of plant protection products and abstracted water.

4.04 These and other developments essential for a dynamic food production industry often require full planning permission. This can create significant burdens and costs on the micro-businesses that form 98% of England's farm businesses, particularly if the overall planning framework does not unequivocally encourage development.

4.05 The regulations surrounding planning permission often do not reflect the needs of farms or food businesses. In this section we address this problem through recommendations on:

- 'localism' (paragraphs 4.06–09);
- the National Planning Policy Framework (paragraphs 4.10–12);
- permitted development and prior notification (paragraphs 4.13–18);
- polytunnels (paragraph 4.19–23);
- information requirements (paragraphs 4.24–27);
- village greens and rights-of-way (paragraphs 4.28–39);
- seasonal workers' accommodation (paragraphs 4.40–42); and
- renewable energy operations (paragraphs 4.43–44).

Localism

4.06 'Localism' is one of the Coalition Government's major new policies, and the Localism Bill was presented to Parliament on 13 December 2010. The Coalition Government's Local Growth White Paper²⁸, published in October 2010, pledges to "shift power [from central Government] to local communities and businesses". It argues that "localities themselves are best placed to understand the drivers and barriers to local growth and prosperity, and ... should lead their own development to release their economic potential." The white paper asks local enterprise partnerships (LEPs), led by business "to develop a strategy for growth that uses and grows local talent, meets the needs of local people, and helps to contribute to national economic growth".

4.07 The Localism Bill, when enacted, will empower local communities to develop 'neighbourhood plans', offering them the freedom to "bring forward more development than set out in the local authority plan". The creation of neighbourhood plans will give farmers an opportunity that they did not have under the previous planning regime to make the case for local development. **The onus will be on farmers to participate proactively in neighbourhood plans under the Localism Bill and we recommend that they do so.**

²⁸ <http://www.bis.gov.uk/assets/biscore/economic-development/docs/l/cm7961-local-growth-white-paper.pdf>

4.08 Localism will have far-reaching consequences for the farming and food-processing industries. We received mixed views about localism during our evidence gathering. Some consultees relished the local freedoms that would result and the potential for taking on local responsibilities. Most feared a resurgence of ‘NIMBYism’ that would make it difficult to invest in infrastructure necessary to boost farm competitiveness and enable growth. Farmers are a small minority of the local population and farms are highly visible in local landscapes. So, it would be wrong if we did not express concern that localism could lead to opposition to many agricultural and horticultural developments essential for economic growth and local food production. Our comments on planning are against that background.

4.09 Localism offers useful opportunities to contribute to outcome-delivery. But its success is predicated on everyone involved acting responsibly and in full awareness of the wider context (e.g. national goals, EU commitments). We believe that localism will work best where there is a strong national framework underpinning it on the most important issues.

National Planning Policy Framework

4.10 The *National Planning Policy Framework* (the NPPF)²⁹, to be published by the DCLG, will set the national framework that guides local decision-making on planning. We endorse this approach. While we recognise the benefits of localism, we believe that national goals, priorities and needs must be reflected in national approaches. We welcome the ‘Planning and the Budget’ statement made by DCLG in March 2011, which emphasised that the reform of the planning system should do everything possible to support economic growth and sustainable development³⁰.

4.11 It is essential to get this framework right to avoid the huge additional costs and bureaucracy currently attached to development applications. In short: to avoid bad regulation. We believe that it is vital that the industry’s needs for appropriate development are reflected in the NPPF. This will encourage the agricultural industry to respond to the increasing demands of food production and will offer the farming and food-processing industries the space they need to develop capacity, capability and resilience, to stimulate local rural economic growth and to provide jobs. At present, agricultural considerations are undervalued in terms of development; we believe that the drafting of the NPPF provides a valuable opportunity for redress.

4.12 It is essential that the NPPF underpins the importance of development in the countryside and the benefits for growth that agricultural development can provide to local communities and the national economy. This should include related food-processing developments such as grain stores and fruit and vegetable pack-houses. **The NPPF must recognise importance of food production and agricultural businesses. We propose the following specific wording for inclusion in the NPPF:**

“Competitive and profitable agricultural and food-processing industries, producing as much food as possible whilst maintaining environmental standards, are a key feature of national government policy. The planning system must therefore facilitate sustainable intensification³¹ and productive farming which can grow, adapt, innovate and change; and promote the development of agricultural business and the wider food supply chain, recognising the economic and social benefits that these businesses can add to the local community.”

²⁹ <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101220/wmstext/101220m0001.htm#1012204000019>

³⁰ <http://www.communities.gov.uk/news/corporate/1871021>

³¹ The term ‘sustainable intensification’ features in the recent Foresight report on *Global food and farming futures*. See <http://www.bis.gov.uk/foresight/our-work/projects/current-projects/global-food-and-farming-futures/reports-and-publications>

Permitted development and Prior notification

4.13 Until 1995 agricultural buildings up to 465m² gross floor area had ‘permitted development rights’ subject to a number of specific criteria³². This meant that the buildings fulfilling these criteria were not subject to any planning procedures or approvals. Since 1995, these developments have been subject to the ‘prior notification’ procedure³³. Respondents felt that current planning regulations applying to agriculture (some dating back to 1947) are outdated; as such, they ought to be reviewed and permitted development rights reinstated.

4.14 Consultees told us that local planning authorities (LPAs) have recently been interpreting the prior notification regulations in an increasingly complicated way, requesting further information and being unclear on the date at which the 28-day decision-making period commences. This makes an originally simple system unnecessarily and unhelpfully complex. To enable growth and to produce more food we need to update the framework to allow development to take place without unnecessary restraint.

4.15 We appreciate that, with the upcoming enactment of the Localism Bill and the NPPF, the future of measures such as permitted development and prior notification is uncertain. However, there remains benefit in making recommendations related to the General Permitted Development Order (GPDO): even if the GPDO disappears at the national level, our proposals can still be taken forward by LPAs at a local level. Therefore, **we recommend a return to the development regulations which were in place pre-1995 where any agricultural buildings under 465m² on an agricultural unit of 5ha or more is permitted development without prior notification.**

4.16 There are clearly different views about the threshold at which the current prior notification levels are set (specifically 465m² for agricultural developments). During our evidence gathering, we heard that this threshold is anachronistic, being derived from “archaic, out-of-date” legislation; certainly, the current threshold of 465m² has not been reviewed for at least 40 years. In that time, agriculture has upscaled and consolidated dramatically. Yet the threshold has remained the same for the prior notification system. This is a barrier to development and competitiveness.

4.17 Raising the threshold will increase simplicity both for farmers and for LPAs. It will also allow for the appropriate development of modern agricultural businesses. **We recommend that agricultural buildings between of 465–1,500m² surface area, on agricultural units of a minimum size of 5ha, should be subject to the prior notification procedure rather than full planning control.**

4.18 Our proposals on managing water resources are in Chapter 6. Our specific recommendations on on-farm reservoirs are in paragraphs 6.41–43. To complement that section, **we recommend that the construction of on-farm winter-fill reservoirs up to 25,000m³ be permitted under the GPDO. LPAs should expedite their construction, with appropriate conditions regarding siting and design. Water infrastructure for agriculture and horticulture should be recognised as strategic within the NPPF and by LPAs.**

³² Part 6 of the Town and Country Planning (General Permitted Development) Order 1995.

³³ The prior notification process was intended to be a compromise between maintaining completely permitted development and agricultural buildings requiring full planning permission. Under prior notification, the applicant notifies its Local Planning Authority (LPA) of what they propose to build, submitting a site plan and a description of the building and its materials. The LPA then has 28 days to determine whether or not the project requires prior approval.

Polytunnels

4.19 Polytunnels are an essential part of British horticulture³⁴. Polytunnels extend growing seasons and the type of crops cultivated, allow people to enjoy more locally grown fruit and vegetables for a greater part of the year. But polytunnels are often locally controversial because of their visual impact. Many consultees told us they are unclear whether or not these semi-permanent structures are subject to planning law. Others were concerned about inconsistency in approach between LPAs. Such uncertainty and inconsistency impedes business investment decisions.

4.20 A legal judgement in 2005³⁵ determined that large semi-permanent polytunnels should be classed as buildings and thus subject to planning law and to require planning permission. Full planning applications place a substantial financial burden on businesses, both through loss of productivity and the actual cost of submitting the application. Subsequently, the Government's Chief Planning Officer confirmed that "the case does not mean that all future polytunnels will necessarily need planning permission". This demonstrates the lack of clarity on this matter.

4.21 We wish to reduce regulatory complexity wherever possible. This can be achieved by clear guidance for polytunnel development. **We recommend that Part 6 of the GPDO is amended to create a category that would include polytunnels.** This would result in polytunnels being eligible for the prior notification procedure, but not subject to full planning permission.

4.22 In considering siting and design issues on polytunnels as part of the prior notification process, we believe Local Authorities should be able to comment only on the following:

- the minimum distances between blocks *or* the maximum percentage of the landholding to be used for tunnels;
- the maximum height;
- the minimum distance from the curtilage of any house or dwelling;
- requirements for removal of obsolete tunnels; and
- requirements for removal of polythene/covers in winter.

4.23 We have heard anecdotally that some LPAs are requesting planning permission for other temporary horticultural structures, such as cherry nets. Having to make these kinds of applications wastes both the farmer's and the LPA's time. Therefore, **we recommend that LPAs take a pragmatic, non-regulatory approach to horticultural support structures, such as 'table tops', training systems and fruit-netting; these should all remain outside the planning system.**

Information requirements

4.24 Some farmers and food-processors consider that onerous information requirements lead to delays in both preparing and deciding on full planning applications and to additional costs where consultants need to be employed to produce specialist reports.

4.25 Government guidance is available on the information that can be requested by LPAs in order to determine a planning application. This DCLG document³⁶ includes the statement:

³⁴ Ninety per cent of Britain's strawberries are grown beneath them (source: NFU).

³⁵ R (on the application of Hall Hunter Partnership) v (1) First Secretary Of State (2) Waverley Borough Council (3) Tuesley Farm Campaign/Residents Group (2006) EWHC 3482 (Admin)

³⁶ <http://www.communities.gov.uk/publications/planningandbuilding/validationguidance>; paragraph 27

“LPAs should make *proportionate* requests for information, and should not use invalidation to prevent the start of the determination period where an applicant has taken reasonable steps to fulfil the information requirements set out on the local list.” [our italics]

4.26 The interpretation of ‘proportionate’ varies between LPAs, and this distorts applications. Some LPAs request expensive surveys (wildlife modelling, habitat surveys, Environmental Impact Assessments etc.). These can often cost over £10,000 and, in one instance reported to us, cost nearly £50,000. This is a huge deterrent to micro-businesses that wish to plan, invest, develop and grow.

4.27 The unpredictable nature of what may be requested by local authorities makes it difficult for agricultural businesses to finance and plan their development. We appreciate that this matter goes much wider than just food and farming but we feel strongly that this uncertainty is a major deterrent to business development. So, **in order to simplify and reduce unnecessary delays in the planning application process, we make the following recommendations:**

- **for outline planning permission and prior notifications, LPAs should be required to respond within 14 days to notify if there is a need for any additional information to validate the application (this is consistent with our wider strategic recommendation that Government commit to maximum response times (paragraph 2.31);**
- **for outline planning permission and prior notifications, LPAs should be required to provide a substantive reply and decision within 42 days of the original request (ditto);**
- **local planners should be offered training in agriculture, horticulture and the food industry. The onus on this should come from farming organisations but we also commend this opportunity to agricultural colleges.**

Village greens and footpaths

4.28 We make the following comments within the context of localism, and in the interests of encouraging strong, cohesive local communities. The recommendations below attempt to address problems that can be divisive in local communities and can hamper the spirit of localism.

4.29 We received evidence that inappropriate applications for designations are acting as a barrier for development, with designations being sought deliberately to thwart planning applications. Issues were also raised surrounding non-statutory wildlife sites (see paragraphs 6.78–80). The town or village green designation was singled out. Approximately 200 applications are now made every year, up from just a handful per year in the late 1990s. We understand that about one-quarter are granted.

4.30 We also received evidence of the problems for farmers and landowners caused by the continued discovery of historical rights-of-way and the attempted recording of new rights-of-way by established use. Whilst providing appropriate access in the countryside is entirely right, managing land for path users is a significant responsibility for landowners. It was also brought to our attention that some routes are incompatible with current land use; the only simple way to re-route these is by means of a Diversion Order. What landowners find unreasonable is that even if they and the surveying authority can agree a pragmatic diversion, any change can be challenged, potentially resulting in a time-consuming and costly inquiry process.

4.31 The designation of new greens and the establishment of rights-of-way (either historical or through established use) generated a common complaint from landowners. They both impose a significant burden of process on the landowner if they wish to defend their land against any designations that they consider to be inappropriate.

4.32 The adversarial nature of the inquiry is divisive. Moreover, going through an inquiry is time-consuming and can be very costly for landowner and local authority alike. We heard of one case where a farmer paid over £30,000 to successfully defend against a claim relating to a footpath. In another case, we heard that a landowner successfully defended against the inappropriate designation of a village green on his land, but at the cost of £20,000 to the local authority and £40,000 to him.

4.33 Landowners felt that the process is unfairly biased in favour of the applicant in such cases. This is because the costs of determining the application, and subsequently the inquiry, fall not to the applicant but to Local Authorities. Moreover, the onus is on landowner to provide evidence that disproves statements made by the applicants and to pay for legal advice and advocacy at the inquiry.

4.34 At present, the applicant bears no financial implications should his/her request for a designation be rejected. Yet landowners must pay the costs of opposing these applications, whether they are successful or not. **We recommend that for both the application for designation of village greens and the recording of new rights-of-way, mechanisms should be introduced to rebalance the process and to ensure that reasonable costs are met by both parties (i.e. including applicants).**

4.35 We appreciate the importance of green spaces to local communities. However, we think that these designations must be applied in a way which is proportionate and does not stifle local development. **We recommend that the proliferation of inappropriate village green designations is addressed. We understand that, as part of their Business Plan commitments, Defra and DCLG will be looking to reform village green designations and to introduce a new local 'green space designation'. We would recommend that Defra/DCLG use this reform to address our concerns in paragraphs 4.28–34.**

4.36 Turning to rights-of-way, we appreciate that in some cases there is real value to local communities in re-instating historic rights-of-way and creating rights-of-way by established use. But, against the backdrop of the Government's Growth Agenda, this value must be balanced against extra obligations and costs imposed on landowners. We welcome the recent 'Stepping Forward' report by the NE Stakeholder Working Group on Unrecorded Rights of Way³⁷. This report examined a range of issues on historical rights-of-way, including the above issues. We would welcome an earlier resolution of the issue of the discovery of historic rights-of-way because of the burdens that this imposes on landowners and local authorities. However, if this is not possible, **we recommend that the Group's conclusions that a cut-off date of 2026 for discoveries of historic routes should be implemented, as originally introduced by the Countryside and Rights of Way Act 2000, whereby a final map is drawn up with all footpaths and rights-of-way, with no more being added.**

4.37 We also endorse the Group's recommendation that surveying authorities are given new powers to reject, without substantive consideration, applications for both historic rights-of-way and those from established use that do not meet a basic evidence test. In coming to such decisions, we believe these authorities should take into account the considerable costs to the landowner, and they should explore how applicants should be required to share the costs of examining applications.

4.38 We also wish to make a new proposal for time-limited provisions to divert a footpath temporarily, e.g. for the life of a multi-year high-value crop, or even for much longer periods. We understand that there is no regulatory provision for this and do not propose adding one because of the extra burden that this would impose. However, **we recommend that a pragmatic solution for temporary diversions should be to put the proposed diversion to the relevant local access forum, for agreement or otherwise. We believe that it might be helpful for the Government to supplement this local approach with a code of practice.**

³⁷ This was a balanced group with representatives of landowners, Local Authorities and pro-access groups. The report was published in March 2010. See <http://naturalengland.etraderstores.com/NaturalEnglandShop/NECR035>.

4.39 We understand that Defra is currently considering the various access proposals put forward by the Stakeholder Working Group on Unrecorded Rights of Way. **We encourage the Government to consider our recommendations and the strong sentiment behind them in any wider package of measures to come out of the work of the stakeholder working group.**

Seasonal workers' accommodation

4.40 In order to provide high standards of worker welfare, agricultural businesses need to provide seasonal workers with appropriate living conditions. At the moment it is very difficult to get planning permission for permanent accommodation for seasonal workers. As a result, businesses can be forced to house workers in temporary accommodation, such as caravans, which must be moved every year in order to continue to qualify as 'temporary'. Such accommodation often cannot be connected to mains electricity or water, and lacks toilets or washrooms. This is not good for seasonal workers. Moreover, many businesses would like to be able house their workers in better facilities.

4.41 We believe that simplifying planning application procedures would enable businesses to improve easily the facilities that they provide for seasonal workers. **We recommend that there should be a presumption in favour of planning applications for seasonal workers' accommodation in established horticultural businesses.** Taking into account our recommendations on prior notification and permitted development (paragraphs 4.13–18), **this would mean allowing permitted development for buildings up to 465m² surface area and prior notification for buildings between this threshold and 1,500m².** The principal concern of the planning authority should be about siting and design.

4.42 To counter concern that these buildings could be quickly and inappropriately converted into 'residential dwellings', we suggest that approvals be granted on condition that the buildings and facilities will only be used for seasonal workers and that any changes would require the owner to submit a full planning application.

Renewable energy operations

4.43 The difficulty of securing planning permission for renewable energy operations was raised during our evidence gathering. We understand that some such operations can have impacts on the local environment. This is true whether or not they are farm-based. In this light, we do not feel it is appropriate to make recommendations. Nor do we think it would be appropriate to propose that renewable energy obligations be eligible for permitted development.

4.44 However, we entirely sympathise with farmers mystified by LPA reluctance to give planning permission for renewable energy developments. In the context of the UK's climate change commitments, renewable energy targets and the Government's pledge to be the "greenest government ever", we are disappointed that the current regulatory framework is inhibiting the farming industry's ability to contribute to major environmental outcomes. **We recommend that the NPPF should recognise the important of on-farm renewable energy developments.** We cover other issues surrounding renewable energy further in paragraph 6.82–84.

Agricultural labour

4.45 To ensure that there is adequate capacity to meet the increasing needs of food production, the farming and food-processing industries depend upon a flexible, skilled labour force whose rights are sufficiently protected and respected. This outcome is at the core of all of our labour recommendations.

4.46 Here we cover several labour issues specific to farming. We start with the issues surrounding seasonal labour. It cannot be emphasised too frequently that agriculture suffers from a structural labour problem, and this problem will always continue due to the seasonal nature of much agricultural work. This results in the annual demand to recruit labour to fill a temporary seasonal need. This seasonal labour demand creates problems for the sector, and was the genesis of both the Seasonal Agricultural Workers Scheme (paragraphs 4.50–55) and the gangmasters licensing system (paragraphs 4.56–60).

Seasonal workers

4.47 Seasonal workers are a vital part of the UK growing industry. It is estimated that every full-time, permanent (and often highly specialised) job in the horticultural industry is supported by 10 seasonal workers. Without them it would be impossible to have fresh produce from the UK.

4.48 The Fruit and Vegetable Task Force³⁸ made a number of sensible recommendations on how to ensure an adequate labour supply, some of which we examine here. We look at three particular issues:

- using UK and EU citizens in seasonal work (paragraph 4.49)
- the Seasonal Agricultural Workers Scheme (paragraphs 4.50–55); and
- the gangmasters licensing scheme (paragraphs 4.56–60).

Using UK and EU citizens in seasonal work

4.49 More needs to be done to encourage UK citizens to take seasonal agricultural work. Given current unemployment levels, there is clearly significant potential supply of domestic labour. Both Government and industry could do more to help this. **We recommend that the Department for Work and Pensions adapts the benefit system to reduce financial disincentives (such as loss of benefits) for the unemployed to undertake seasonal work. We recommend that the agricultural industry improves its collective communication strategy to encourage greater take up of seasonal work by EU citizens, particularly students.** One option might be to launch a marketing campaign, perhaps drawing on the experience of the ‘Take our Jobs’ campaign run by the United Farm Workers in the USA³⁹.

Seasonal Agricultural Workers Scheme (SAWS)

4.50 The SAWS is a short-term immigration scheme that allows farmers and growers to employ ‘low-skilled overseas workers to undertake short-term agricultural work’⁴⁰. Workers are now only eligible for the scheme if they are Romanian or Bulgarian nationals; before the accession to the EU of Romania and Bulgaria, SAWS was open to students from some non-EU countries. The Scheme is due to expire in 2011, but may be extended to 2013. It is the demise of the Scheme that concerns the growing industry.

4.51 We accept that SAWS is a bureaucratic system. However, we think that SAWS is an example of a system that produces good outcomes. From an industry perspective, consultees generally described SAWS as a useful scheme that provided a significant proportion of the seasonal labour necessary in the horticultural, industry. From an immigration perspective, the return rate to their country of origin of SAWS workers is exceptionally high; SAWS is a largely trouble-free scheme.

³⁸ <http://www.defra.gov.uk/foodfarm/food/policy/partnership/fvtf/index.htm>

³⁹ <http://www.takeourjobs.org/>

⁴⁰ <http://www.ukba.homeoffice.gov.uk/workingintheuk/eea/saws/>. The Task Force questions whether these activities are ‘low-skilled’.

4.52 The terms of SAWS protect key worker rights: workers are entitled to the same minimum wage rates and other terms and conditions as workers with full access to the UK labour market and employers must provide workers with accommodation. SAWS operators must be licenced by the Gangmasters Licensing Authority. As a result, employers making use of SAWS are subject to a number of inspections and other regulatory requirements.

4.53 The reality is that once the immigration controls are lifted on Romanian and Bulgarian workers, they will no longer want to work in the horticultural industry. Growers have told us that this was the case for other EU nationals when immigration controls were lifted and we think this will be the case here. Seasonal work is vital for the UK horticultural industry and schemes such as SAWS are an attractive opportunity for other country nationals to earn money in the UK in a safe and protected way.

4.54 When the current SAWS ends, there is scope to introduce a new scheme. This should cast the net wider to include countries which are being considered for EU membership, such as Croatia, Macedonia and Montenegro⁴¹. **We urge the Home Office to introduce a replacement for the Seasonal Agricultural Workers Scheme to enable workers from prospective accession states to provide seasonal labour for UK agriculture and horticulture.**

4.55 Bearing in mind that EU expansion is essentially finite and transitory, we would also urge the Home Office to consider re-including non-EU countries in SAWS. Ukraine, Belarus and Moldova could conceivably provide UK seasonal labour. Some of these countries already provide seasonal labour to the industries of other EU countries (e.g. Poland sources Ukrainian seasonal workers) – so there is a potential competitiveness constraint here.

Gangmasters licensing scheme

4.56 The Gangmasters (Licensing) Act 2004 created the Gangmasters Licensing Authority (GLA). Under the Act the GLA is required to establish and operate a licensing scheme and create a register of labour providers ('gangmasters' in the terminology of the Act). The Act makes it a criminal offence to act as a labour provider without a licence – and to use labour other than that supplied by a licenced labour provider⁴². Many farmers and food-processors are labour users and are thus obliged to use licenced labour providers.

4.57 There were mixed views on the gangmasters licensing system. A number of consultees suggested abolishing the Gangmasters Licensing Authority altogether. Many felt that its existence was unfair, putting the agricultural and horticultural industries in a negative light. Other consultees believed that the GLA is working well.

4.58 A clear perception problem, from labour users at least, surrounds who the GLA inspects and how they inspect them. Some feel that GLA literature tarnishes the reputation of horticulture. Despite Defra guidance, many respondents are unclear which activities are within and which are outside the GLA's scope. There is also the perception that the GLA targets labour users. Some labour users also believe that they have to register with the GLA. This is incorrect: labour users can voluntarily 'sign up' for additional services to assist them with their own due-diligence checks. However, we heard that labour users increasingly prefer not to do so via the GLA website, as they think this will guarantee them a GLA inspection.

⁴¹ Potentially also Albania and Serbia should they become EU accession states.

⁴² A licence is not required if the workers supplied undertake work which falls within the scope of one of the exclusions set out in the Gangmasters Licensing (Exclusions) Regulations 2010.

4.59 At the outset, we want to make clear that we do not agree with calls we received for the abolition of the GLA. The GLA was included as part of the Government's recent Arms Length Bodies Review. We endorse its conclusion that the GLA should be retained. We believe that the GLA has an important role to play in protecting worker welfare. We do not take a view on whether the GLA's responsibilities should be integrated with those of BIS in relation to employment agencies. In the light of the broad endorsement by the Hampton Review team, we also believe that many problems identified during our evidence gathering relate to perception rather than principle. Accordingly, our recommendations on the GLA fall into three broad areas: communications and perceptions (paragraphs 4.61–63); inspections and enforcement (paragraphs 4.64–69); and an alternative to licensing (paragraph 4.70).

4.60 The GLA's enforcement and compliance role is included within the remit of the Government's recent review of workplace-rights, compliance and enforcement arrangements⁴³. This is part of a wider review of employment law that is taking place during the current Parliament. The review is examining the scope for streamlining and increasing the effectiveness of workplace-rights compliance and enforcement. There is significant overlap in the terms of reference of this review and the types of recommendations that we make regarding gangmasters licensing. Accordingly, **we urge those leading the review to consider our recommendations as a means of reducing the burden of administration and inspection when enforcing workplace rights.**

Communications and perceptions

4.61 As we make clear in paragraphs 5.20–22, guidance must help users to comply and thus must be usable. There is no point in unread, unclear or unhelpfully complicated guidance. We appreciate that the GLA discuss draft guidance with a labour-user group. But we received evidence that the GLA needs to produce more easy-to-use information available on what are excluded activities. We are encouraged that the GLA is revising its website structure and hope it will do so with the consideration of making it clear and accessible for labour users.

4.62 We expect the GLA to continue to work with industry and trade associations in drafting guidance. Given that it is labour users (e.g. growers) who appear to be particularly concerned, **we recommend that the GLA continues to work with the National Farmers Union (NFU) and other representatives of labour users to lead drafting of future guidance specific to labour users. In line with our strategic recommendation (paragraphs 2.18–19), we recommend that the GLA and NFU jointly own this guidance.** There should also be an onus on trade associations to evolve and communicate this guidance effectively with their membership.

4.63 Evidence we have received suggests that the horticultural industry perceives that the GLA is actively targeting labour users. In reality, we believe that the GLA is targeting labour providers, but simply inspects the place of work of the labour (i.e. the labour user's farm). We accept that the GLA has to enforce the offence of using an unlicensed labour provider. **To improve its relationships with the farming and horticultural industry, we recommend that the GLA should better communicate its priorities (enforcement against rogue gangmasters) and further engage with labour users on its enforcement approach.** Planned amendments to its website structure (paragraph 4.61) should also help.

Inspections and enforcement

4.64 We appreciate the GLA's dedication to worker welfare and the commitment of its inspectors to enforcing the criminal offences in the Gangmasters (Licensing) Act. However, a more targeted approach to inspection and enforcement benefits needs to evolve. So we welcome GLA's pilot to test lighter-touch

⁴³ www.parliament.uk/deposits/depositedpapers/2011/DEP2011-0201.doc

regulation in the forestry sector, which it deems to be low risk. This pilot runs for a year from 6 April 2011⁴⁴. We understand that, in the light of the outcome of the pilot, the GLA will decide whether to roll out the pilot more widely. **We welcome the GLA's pilot, and recommend that it be extended to low-risk activities in farming and growing.**

4.65 The forestry pilot appears to be taking the approach of earned recognition (for which see paragraphs 3.12–30) – offering a 'lighter touch' for those meeting certain criteria, e.g. membership of industry groups and those subject to audits by their supply chain. **We are encouraged by this and believe that the GLA should move its inspection regime to a more targeted, risk-based approach using the principles of earned recognition.**

4.66 The GLA samples when conducting its inspection; we understand that its guideline is for inspectors to interview 10% of workers. However, there is a perception among labour users whose gangworkers are interviewed that inspectors sometimes do not follow this guideline. In a similar vein to our recommendations on sampling in inspections (e.g. paragraph 3.04), only if a number of workers interviewed identify problems should further workers be interviewed. **We recommend that the GLA ensures that its inspectors are clear as to the guidelines that are in place when conducting inspections.**

4.67 One common complaint from labour users is that unexpected inspections of gang labour affect delivery of commercial commitments (e.g. because workers are interviewed rather than working). We appreciate that it is efficient for the GLA to inspect a labour provider's activities at the place of work of their workers (e.g. a farm), particularly where information suggests worker exploitation but no workers are known. We understand that the GLA will interview workers at their accommodation, and elsewhere if the workers have approached the GLA and request that approach. However, **we recommend that the GLA explores further alternative means of interviewing gang workers without disrupting farm businesses as far as possible and without adversely affecting its ability to identify worker exploitation.** This would improve the GLA's relationship with labour users, would help mitigate the perception that labour users feel they are inspected and would allow 'normal' work to continue with minimal disruption.

4.68 We understand that labour users who have unintentionally used an unlicensed labour provider are still in breach of the law and that ignorance is no excuse for non-compliance. However, we are concerned by the suggestion received during our evidence gathering (paragraph 4.58) that farmers are not voluntarily registering to receive information from the GLA or for the labour provider active check service because they think that it may lead to them being inspected. This is clearly counterproductive for the GLA as it constrains awareness among labour users of GLA guidance and other material. Moreover, it is short-sighted of labour users, as they are unable to take advantage of the services that the GLA offers them.

4.69 **We recommend that the GLA and trade associations should work together to better communicate the advantages of a labour user voluntarily registering on the GLA website as a labour user. We also recommend that the GLA make clear that labour users that voluntarily register on the website are at no higher risk of inspection than if they do not register.** This will further encourage good growers to participate.

An alternative to licensing

4.70 We are aware that Defra Ministers recently confirmed to Parliament that they have no plans to move away from the current system of licensing. We are also aware that BIS is leading a Government review of workplace enforcement. In this context we note that a licensing regime may not be the most

⁴⁴ <http://www.gla.gov.uk/boardPapersManagementSystem/MeetingDocuments/GLA%2027%207.2%20Forestry%20Pilot.pdf>

efficient and effective way to deliver the desired outcome of worker welfare. This led us to consider whether a move to a 'registration and enforcement' model might be a more effective approach. Under this model, we envisage that all businesses falling under the current GLA mandate would be required to register (for a small annual fee). Under this approach, as now, enforcement could be risk based, be led by intelligence and additionally use earned recognition, which the GLA is considering. **We recommend that Defra explores the costs and benefits of a 'registration and enforcement' model as an alternative way of delivering desired outcomes.**

Transport

4.71 Our evidence gathering did not reveal substantial industry concern about transport-related issues. We have identified only three problem issues: trailer licences, weight/speed restrictions and forklift testing. All relate to unnecessary or unnecessarily burdensome regulation. We believe that regulations relating to farm machinery need to be pragmatic and proportionate and should reflect the needs, capabilities and realities of modern farm businesses.

Trailer licences

4.72 Farmers who hold a driving licence automatically have the right to drive tractors with agricultural trailers, up to a maximum weight of 18.29 tonnes. However, anyone who passed their driving test after 1997 must take an additional test in order to be able to tow trailers larger than 750 kg behind a car or four wheel drive vehicle⁴⁵.

4.73 Consultees believe that trailer-licensing requirements contained in the Motor Vehicles (Driving Licences) Regulations 1996 are unnecessary. Farmers and farm workers required to take this test already have experience of towing trailers off road so do not present any greater risk to road-users for not having taken the specific trailer test (i.e. there is no benefit to outcomes). The additional test is expensive and burdensome for micro-businesses which must cover the costs of mandatory training, test and non-productive working hours.

4.74 We see no logic in identifying the cut-off date of 1997 or, indeed, in any cut-off date. We suggest that the Driver and Vehicle Licensing Agency (DVLA) should be able to take into account the demonstrable experience of farmers and farm workers in handling large machinery off-road. **We recommend that the DVLA introduces an exemption from the B and E category licence requirement for vehicles used for agriculture, horticulture and forestry.**

Weight/speed restrictions for trailers

4.75 The Road Vehicles (Construction and Use) Regulations 1986 specify maximum weights and speeds for agricultural vehicles. Currently, the maximum permitted weight for a conventional agricultural vehicle is 24.39 tonnes, with the maximum weight for a trailer in this combination at 18.29 tonnes. The maximum speed for a conventional tractor is 20 mph.

4.76 Consultees told us that these maxima do not reflect the capabilities of modern farm machinery, forcing farmers to drive unnecessarily slowly on public roads and preventing them from using particular trailers on public roads. Both situations cause unnecessary delay for farmers, and, when driving slowly, cause a nuisance to other road-users. It is also worth noting that restrictions for the same vehicles do not apply in EU member states – which suggests that this might be a competitiveness issue.

⁴⁵ <http://www.businesslink.gov.uk/bdotg/action/detail?itemId=1081988794andtype=RESOURCES>

4.77 The limits in the 1986 Regulations are out-dated and do not reflect technological developments over the last quarter-century. **In the light of the size/needs of modern farm machinery, we recommend that Department for Transport (DfT) amends the 1986 regulations, making the following changes:**

- **the maximum speed limit for tractors should be aligned with the rest of the EU at 40 km/h;**
- **the maximum weights of trailers and combinations are increased from 18.29 tonnes and 24.39 tonnes to 21 tonnes and 31 tonnes respectively. We appreciate that, due to other legislation, any machinery of this weight would be required to be registered with an appropriate scheme to ensure roadworthiness. We understand that such a scheme is being developed by the industry in partnership with the DfT.**

Forklift testing

4.78 We received comments that referred to a requirement for forklift drivers to take a retest of their certificate of basic training within a specified time limit, thought to be three years. Respondents felt this requirement was burdensome and unnecessary given that operators who were certified some years ago have no time limitation on the certificate. As we understand it, there is no requirement for forklift drivers to take a retest within a certain time limit. Instead the onus is on the employer to assess staff and decide when refresher training should take place in order to ensure that all employees are using equipment safely.

4.79 This misinterpretation of the re-licensing requirements suggests a need for improved communication. **We recommend that the relevant training guidance or application form from the certification body makes this clear to test candidates booking a forklift-driver training and certification test. We also recommend refresher courses for all forklift drivers from time to time.**

Red diesel

4.80 In line with the Coalition Government's 'big society' agenda (paragraph 1.10), we believe that systems should be in place to allow farmers to contribute their resources and expertise to society during times of emergency. During the extreme winter weather experienced in December 2010, for example, farmers used their agricultural vehicles to clear snow from public roads. We welcome the temporary derogation that was granted to farmers by Her Majesty's Revenue and Customs to allow such farmers to use agricultural vehicles fuelled with 'red diesel' for such non-agricultural purposes (e.g. to clear snow from the roads) during this difficult time.

Health and safety

4.81 A huge issue for the farming industry is the health and safety of its people. We know that the farming industry recognises the role of the Health and Safety Executive (HSE) and its objectives. But this has to be set in the context of agriculture now being the single most dangerous industry in Britain, having overtaken construction in 2009, and having failed to improve its death and injury rate for over 20 years.

4.82 There is no doubt that too many farmers do not sufficiently recognise safety on their farms – although many of the farmers we spoke to felt that the Health and Safety Executive conducted inspections "the right way". We endorse HSE's risk-based approach to inspection and their pro-active approach to improving compliance. However, if the farming community wants to avoid more inspection and regulation it must address this issue more seriously.

4.83 It is therefore implicit in the sentiment of this report that **we urge farmers to remember the HSE message "Make the promise: come home safe" and increase their professionalism in awareness of health**

and safety issues. All farmers should provide an explicit commitment to their own health and safety, and to that of their family and their workforce. To do otherwise risks the unintended consequence that the largely pragmatic and goal-setting regime set by the HSE will be seen to be ineffective in today's farming environment. We remind HSE and farmers alike of our approach on the proportionality of penalties (paragraphs 2.25–28): major non-compliance should receive stiff penalties. We note that Professor Ragnar Löfsted will chair a Government review of all existing health and safety law with a view to scrapping measures that are not needed and put an unnecessary burden on business. We welcome this review, but it will only be truly effective if the farming accident record improves from within the industry. We therefore strongly commend the industry-led Farm Safety Partnership and Charter which we understand will be launched shortly.

Tenancy issues

4.84 We have received evidence from tenant farmers and the pan-industry Tenancy Reform Industry Group on two specific tenancy issues, the Agricultural Holdings Act 1986 and the Agricultural (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973.

Agricultural Holdings Act 1986

4.85 The process of resolving disputes which arise within agricultural tenancies has become complex and expensive. **We think there should be consideration of a less costly approach. In particular this should allow the parties to a Tenancy Agreement to contract out of the arbitration provisions within the existing legislation and to opt for disputes to be settled by an Independent Expert where the matter does not relate to a notice to quit.** This could cover rent reviews, consent for improvements, notices to do work, game damage and similar provisions. Arbitrations can be an expensive and protracted way of resolving certain disputes when compared with instructing an expert whose decision is binding on the parties.

Agricultural (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973

4.86 We were told that these regulations are dated and require a thorough review. They are felt to be very prescriptive. A specific example of their antiquity is the references to sums of money in the schedules which appear to be outdated in 2011. **We recommend that Defra invites the Tenancy Reform Industry Group to undertake such a review.**

Chapter 5 Paperwork

We recommend:

- that Defra adopts our ‘principles of paperwork’, which cover forms, plans, records, data collection, use of online tools and guidance;
- specific changes to paperwork associated with livestock movements, the Single Payment Scheme, environmental permitting, food chain information and Nitrate Vulnerable Zones; and
- that agricultural surveys are completed online and Defra continues to lobby the EU over the size and extent of required agricultural surveys .

Introduction

5.01 If there is a single universal ‘complaint’ from farmers that we have heard wherever our evidence gathering took us, it is paperwork. Almost all consultees identified ‘forms’ as the single most burdensome and arduous aspect of any regulation. All complained that this process confines them to the office rather than running their business. In Annex 4 we list the paperwork involved in a typical horticultural business.

5.02 Agricultural businesses are required to fill in a huge amount of paperwork. In addition to complying with the regulations and administrative requirements which apply to any business (paragraph 1.23), they have paperwork for the Single Payment Scheme (SPS), Nitrate Vulnerable Zones (NVZs), livestock movements and many other areas unique to farming. We accept that SPS forms bring public money. But 98% of farm businesses in England are micro-businesses with fewer than 10 employees or are sole traders; the smaller the business, the more disproportionate the paperwork burden, and the greater the relative impact on a farmer’s time.

5.03 We use this chapter to:

- make overarching recommendations on appropriate and proportionate principles for creating forms and storing data (paragraphs 5.04–19);
- make recommendations on how to make guidance user-friendly (paragraphs 5.20–22);
- summarise our paperwork recommendations on specific regulatory frameworks made in other chapters (paragraphs 5.23–28); and
- make recommendations on agricultural and other surveys (paragraphs 5.29–34).

Principles of paperwork

5.04 We received many complaints from farm businesses about having to provide the same information several times to different government agencies, completing forms every year where information had not changed from the previous year and having to send copies of paper applications when they would rather complete them online. Farmers’ concerns relate to the number of forms/records required and also to the time that they take to complete; many are complex and require considerable attention. Businesses are also

confused by the variation in the time for which records must be kept: many businesses just keep all records indefinitely, for the sake of safety.

5.05 The administrative burden on farmers can be reduced by adopting and following some simple new ‘principles of paperwork’. These would reduce process to the benefit of outcomes. In headline terms, we recommend:

- that Government and industry should design forms in partnership (paragraphs 5.06–07);
- a new approach to data collection that improves the efficiency of its supply, capture and use (paragraphs 5.08–15);
- an aspiration that paperwork becomes ‘digital by default’ (paragraphs 5.16–17);
- greater use of pre-populated forms (paragraph 5.18); and
- a review of the requirements on farmers to produce plans (paragraph 5.19)

Government and industry should design forms in partnership

5.06 Previous Government reviews⁴⁶ have recommended that ‘real’ farmers are invited to help create or redesign forms. Despite this, we are not convinced that Defra, its agencies and delivery partners have a consistent policy of engaging working farmers in the process.

5.07 **We recommend that for every new administrative burden, Defra, its agencies and delivery partners, and industry should collectively engage a sample of ordinary working farmers to help design the form/record/plan.** This engagement should seek to reach agreement on: the need for the paperwork; the information that is essential to provide, and why; a design that is easy to complete; language and instructions/guidance that are clear and easily understandable;

A new approach to data collection that improves the efficiency of its supply, capture and use

5.08 Many consultees told us that Defra, its agencies and delivery partners collect data unnecessarily and repetitively. We believe that Government must harness farmers’ willingness to comply by ensuring that all requests for data collection are evidence-based and explainable. The key is to tie data collection to use, and to make this clear to farmers. Accordingly, in paragraph 2.35, we set out a number of headline principles for a new approach to data collection. We explore these in turn here.

5.09 We accept that, individually, most forms appear to request an acceptable level of information. However, the many requests for information cumulatively result in a substantial administrative burden. **We therefore recommend that, before soliciting data, Government asks itself whether it really needs the information. The question should be ‘do we really need this information in order to comply with legislation?’ not ‘would the information be useful?’**

5.10 **We recommend that regulators do not collect the same data twice where this can be avoided** (a recommendation that has already been enshrined in the Regulators Compliance Code⁴⁷). We strongly believe that farmers should only have to provide information once and aim to use records that work for the farmer and the regulator so that information is not kept more than once for different reasons. **We recommend that Government agencies endeavour to join up their information-gathering wherever possible.** This is particularly important for those agencies that administer the same forms e.g. NE and the EA.

⁴⁶ e.g. Defra (2009) *Easing red tape for livestock farmers*. See

<http://archive.defra.gov.uk/corporate/policy/regulat/documents/easing-red-tape-for-livestock-farmers0907.pdf>

⁴⁷ BERR (2007) Regulators’ compliance code: statutory code of practice for regulators. See www.berr.gov.uk/files/file45019.pdf

5.11 **We recommend that regulators do not collect superfluous data.** We consider superfluous data to be that which is not used for a readily understandable purpose, such as policy decision-making. Much of the evidence we received suggested that farmers often failed to understand why information was being gathered. This made them less likely to provide it. A clearer explanation of the purpose of each form/request for information would lessen the perception that information is being requested unnecessarily. As we have said (paragraph 2.45), farmers are willing to comply if they understand what they need to do and why.

5.12 We accept that a single Government database for farming, including agricultural inspections, is an ideal beset with difficulties and costs. But such a database would be unnecessary if different regulator databases could communicate with each other. **To reduce burdens on farmers, we recommend that there should be a presumption that regulators share data except where they are not legally or technologically able to do so.** To comply with data protection legislation, farmers submitting data should be invited to agree to this. To ensure transparency, **we recommend that regulators make clear to farmers who their data is being shared with and offer farmers the opportunity to ‘opt in’ to data-sharing between Defra and other regulators.**

5.13 In our evidence gathering, we heard that farmers feel that the timing at which forms are sent out is often not appropriate. A commonly cited example is the sheep census. Defra issues this for 1 June, yet sheep farmers only do their main stocktake during shearing several weeks later. **We recommend that regulators demonstrate sensitivity to sectoral calendars when issuing requests for data.**

5.14 **We recommend that trade associations encourage their members to submit data electronically.** Where appropriate, this could include offering IT training and reminding members that third parties offer services to provide electronic submissions.

5.15 **We recommend that regulators investigate alternative means of gathering data that do not impinge on farmers.** It may be feasible, for example, to enter into a data-sharing agreement with trade associations to the mutual benefit of Government and the association’s members.

An aspiration that paperwork becomes ‘digital by default’

5.16 Despite current problems in broadband access (28% of farmers had none in 2008⁴⁸) and despite the Government’s legal obligation not to discriminate against those without internet access, we believe that the future is and should be online. So we endorse the Coalition Government’s new policy of ‘digital by default’⁴⁹ which will ultimately move virtually all government services online and make them available through digital media. We welcome steps by Defra, its agencies and delivery partners to move more services online. For example, in 2010, the RPA did not send paper application forms to farmers who filed the previous year’s SPS application online. More than one-third of Entry-Level Stewardship (ELS) applications since 2010 have been submitted online to NE, compared to just 4% previously.

5.17 As part of this new approach, **we recommend that Defra and industry set a joint vision of making all paperwork available for electronic completion and online submission.** Defra, its agencies and delivery partners, trade associations and individual farmers will need to collaborate to develop these forms and to promote take-up. In the short term, the focus should be on increasing use of forms that are already

⁴⁸ <http://www.defra.gov.uk/evidence/statistics/foodfarm/enviro/farmpractice/documents/FPS2008.pdf>

⁴⁹ In November 2010, Minister for the Cabinet Office Oliver Letwin announced that the Government “will make digital the primary channel by which [we] inform and transact with citizens and businesses. We will consolidate, and where possible close down, other more costly channels as we drive take-up of digital services”.

available electronically. **As the Farming Theme of Business Link (paragraph 2.38–40) expands in membership, it should become the default means through which farmers can store and submit forms electronically.**

An aspiration to develop pre-populated forms

5.18 Many farmers complained to us that “I sent [Defra/agency/delivery partner] this same information last year”. Wherever possible, Defra, its agencies and delivery partners should aspire to pre-populate forms so that they require only a confirmatory signature. An example is the SPS form, which is pre-populated as far as RPA think possible. We welcome the approach of RPA that leaves information blank if the claimant over-claimed the previous year and would incriminate themselves by any repeat.

Reviewing the requirements to produce plans

5.19 The completion of plans (e.g. Crop Management Plan, Nutrient Management Plan) adds a considerable administrative burden to farmers. We are not convinced that the completion of a plan always contributes to outcomes (although it can be useful for earned recognition purposes; paragraph 3.23). **We recommend that Defra/regulators review the requirements on farmers to complete plans.**

Improving guidance

5.20 We have already said that regulation must be underpinned by clear, concise guidance (paragraph 2.41). Many farmers have told us that keeping up with guidance is in itself a major burden. There is little, if any, co-ordination of new and updated guidance, as it is usually linked to a specific regulation or scheme and it often appears to be more about providing legal cover for regulators. Each of these documents requires time to read and understand. Moreover, guidance is often not fit for purpose. We believe that guidance should serve one or more of three purposes:

- to inform farmers of changes in scheme rules since the previous year;
- to highlight the timetable for completions and return of claim forms and any necessary supporting material and to draw attention to the penalties applied to late claims;
- to provide a clear, succinct guide to the completion of the claim (or application) form using the same box and paragraph numbering as the form itself.

5.21 We have already recommended that industry should have a role in developing draft guidance (paragraph 2.19). **We also recommend that Government considers ways to improve co-ordination of related guidance and the frequency with which it is made or changed.** There may be alternative opportunities to work with trade bodies or assurance schemes that regularly update their members on a range of measures to focus the flow of information and thereby the time taken to take account of it.

5.22 As proposed previously by the Anderson Review on guidance⁵⁰, **where guidance document relate to rule changes, we recommend that they provide upfront a short, ‘quick-start’ guide on how rules have changed. We suggest that guidance documents should be as short as possible; page numbers in single figures if possible!**

⁵⁰ <http://www.berr.gov.uk/files/file49881.pdf>

Summary of regulation-specific paperwork recommendations

Nitrate Regulations

5.23 In paragraphs 6.16–20, we recommend that:

- the review of the Nitrate Regulations significantly reduces the paperwork, including the need for detailed plans and maps;
- it is necessary to keep a record only of the amount of nitrogen applied per field in organic and inorganic form. Where a farmer has a more detailed nutrient management plan, they could earn the right to be less frequently inspected as part of an earned-recognition approach;
- the Farming Theme of Business Link is expanded to enable farmers to submit electronic copies of nutrient management plans online.
- farmers can apply for a derogation from the 170 kg/ha whole-farm nitrogen loading limit through the Single Payment Scheme claim, rather than submitting a separate application;
- a new calculation for NMax should be required only when a significant change in farming practice takes place, or unless the fertiliser recommendations⁵¹ change substantially; and
- organic and low-intensity farming systems are exempted from record-keeping requirements under this regime.

Environmental permitting

5.24 In paragraphs 6.61–62, we recommend that:

- the environmental permitting application form and accompanying charging note should be tailored to the agricultural sector;
- the EA should allow and encourage permit applications to be completed online;

Single Payment Scheme and cross-compliance

5.25 In paragraphs 7.13–15, we recommend:

- that the Soil Protection Review becomes voluntary and be used in earned recognition (with GAEC 1 itself being reframed as a ‘duty of care’);
- removing crop codes from the SPS form where possible;
- extending the SPS-application window so that forms can be submitted from the beginning of January;
- changing the entitlements form to include an option which allows RPA to rotate the entitlements so they remain viable;
- that in cases of dual claims, the RPA gives farmers the option to forward their personal details to the other claimant;
- that the RPA should return to its previous pragmatic approach to ‘obvious errors’ on SPS forms;
- that the RPA should introduce a system of fixed-date replies throughout any appeals process.

Livestock movements and farmed animals

5.26 In paragraph 8.14, we recommend:

⁵¹ Fertiliser recommendations as contained in the Defra [‘Fertiliser Manual’](#) (RB209).

- increasing the use of electronic reporting for livestock movements;
- reviewing information in cattle passports, herd books, flock registers and the fallen stock register to ensure that information is provided only where necessary and in a way consistent with normal farming practice.

Food chain information

5.27 In paragraph 10.39, we recommend that existing information from contractual arrangements between producers and slaughterhouses, and/or farm assurance schemes, should replace the need for food chain information requirements.

Agricultural and other surveys

Agricultural surveys

5.28 Defra surveys farms in June and December each year. The ‘June survey’ (which farmers often call the ‘June census’) is conducted annually in order to comply with EU Regulations⁵². The ‘December survey’ is a smaller survey which covers 10–20% of farms, again mandated by EU regulations⁵³. During evidence gathering, we received consistent comments that Defra’s June and December surveys were unnecessary. The June survey was felt to arrive at an unfortunate time (paragraph 5.13) and was thought to be too “numbers driven”.

5.29 We think that these two agricultural surveys suffer from the incorrect perception that they serve no purpose. This is not true. Both surveys are required by EU legislation, and the data are used by the European Commission to inform EU policy-making. For example, data from these surveys was used to assess the impacts of the abolition of formal set-aside from 2008/9 as part of the CAP Health Check agreement. The data are also used by industry, e.g. to monitor planting trends and create food production estimates.

5.30 It is important to have accurate statistics about the agricultural industry in order to inform the market and create food production estimates. Furthermore, industry should understand that it is in its self-interest to provide such data, as part of it taking responsibility (paragraph 2.10–11). But we fear that these surveys may be unnecessarily extensive. **We urge Defra to continue lobbying the EU over the size and extent of the surveys. We recommend that Defra integrates into its negotiations the new approach for data collection that we outline in paragraphs 5.08–15.**

5.31 That said, we think there are easier ways to collect this information. Consultees suggested sending out the June survey at the same time as the SPS form. We agree that completing both at the same time would be more efficient. Even more efficient would be to enable completion from data already held online, from SPS forms. **We recommend that the June survey is completed entirely online, using information that applicants are already providing for the SPS forms** (with their consent). Defra already uses information from the Cattle Tracing Scheme, rather than collecting it directly from the farmer, so there is a precedent for collecting information for the surveys in this way.

⁵² Regulation (EC) No 1166/2008 on farm structure surveys and the survey on agricultural production methods, Regulation (EC) No 543/2009 concerning crop statistics and Regulation (EC) No 1165/2008 concerning livestock and meat statistics. In most years it is a sample survey (covering about 25–35% of farms) but every ten years (lastly in 2010) it is a full census. Regulation (EC) No 543/2009 concerning crop statistics, and Regulation (EC) No 1165/2008 concerning livestock and meat statistics.

⁵³ EC 543/2009 on Crop Statistics, and EC 1165/2008 on Livestock Statistics.

Food and Environment Research Agency surveys

5.32 As well as paperwork related to regulations (and the agricultural census/surveys), some farmers also referred to the annual pesticides usage survey. While farmers and growers recognise the value in providing this information they made the point that it takes time to complete and there is a perception that willing farmers are repeatedly targeted to complete these surveys.

5.33 We welcome reassurance from the Food and Environment Research Agency (FERA) that it does all it can to ensure that farmers are not unduly inconvenienced by the surveys and that those who have recently been contacted are avoided wherever possible. However, in areas where there are few, large businesses (e.g. arable areas), repeat requests may be unavoidable. **We recommend that FERA continues to make the best use of online and electronic tools to reduce the time it takes farmers to complete surveys.**

Tax

5.34 During our evidence gathering, we heard some minor concerns regarding tax issues. These were generally specific policy concerns, such as new capital gains tax rules, farming levies and capital allowances legislation, but also some about paperwork. As these are wider business and policy issues, rather than regulations which were causing an unnecessary burden on just farmers, they are outside our remit.

Chapter 6 Environment and land management

We believe that burdens on farmers can be reduced without compromising environmental outcomes, and recommend that:

- **record-keeping and calculations to demonstrate compliance with the Nitrate Regulations should be significantly simplified, and there should be exemptions for organic and low-intensity farming systems;**
- **Defra, building on partnership initiatives existing within the industry, should move towards a catchment approach for managing diffuse pollution, paving the way for eventual management of nitrates purely through the Water Framework Directive;**
- **the Water White Paper should recognise the importance of a sustainable water supply to the farming sector;**
- **Defra should also better manage water as a resource for agriculture by lifting specific regulatory burdens;**
- **the regulation of waste and integrated pollution prevention and control (IPPC) should be kept to the minimum possible;**
- **environmental permitting forms and guidance should be tailored to the agricultural sector;**
- **the need for farmer registration could be reduced by applying a general licence to some negligible-risk waste activities;**
- **IPPC inspections should be reduced, ensuring objective application and complaints processes, and removing controls if possible; and**
- **the Government should ensure greater consistency across its policies relating to renewable energy in the farming sector.**

Introduction

6.01 Defra's Business Plan⁵⁴ envisages England's farming and food-processing sectors being competitive and producing more food sustainably. It also envisages the sectors accepting responsibility to protect and enhance landscapes, wildlife, and environment, and facilitating public enjoyment of the countryside. We agree that maintaining environmental standards is non-negotiable. Continued stewardship of the natural environment is needed in a developed agricultural landscape.

6.02 Some regulation is essential to protect the natural environment. But this can be better oriented away from process and towards outcomes. We believe that our recommendations will reduce some of the unnecessary burdens of regulation without compromising fundamental environmental protection. Moreover, we believe that if our recommendations are taken as a whole, they should improve

⁵⁴ <http://archive.defra.gov.uk/corporate/about/what/documents/defra-businessplan-101108.pdf>

environmental outcomes. Poor regulation that involves unduly complicated procedures diverts a farmer's attention away from addressing the environmental problem and towards the process (e.g. filling in paperwork or writing a plan). This also shifts a regulator's attention away from assessing the physical environment, and towards simply checking paper records, thereby measuring the process and not how the outcome is being achieved.

6.03 We divide our recommendations into five areas: water quality (paragraphs 6.05–34); water availability and supply (paragraphs 6.35–56); environmental permitting (paragraphs 6.57–81); energy (paragraphs 6.82–91); and other issues (paragraphs 6.92–94). In this chapter, we do not address inspections, planning or cross-compliance in detail. These are considered elsewhere (chapters 3, 4 and 7 respectively).

6.04 Defra will shortly publish a key step towards the future policy for, and regulation of, the natural environment: the Natural Environment White Paper (NEWP). There are likely to be links between our report and the NEWP. The key difference between the two is that the NEWP will make proposals relating to the wider policy-setting context whilst our Task Force Report specifically focuses on minimising unnecessary burdens arising from regulation (e.g. of the natural environment). (This is in addition to the obvious difference that our report is *to* Government, and the NEWP is a publication *by* Government.) We would like to direct a suggestion about the integration of environmental messages to those preparing the NEWP. We are concerned that information about nutrients, pesticides, water quality, soils, biodiversity etc. are all promoted separately to farmers, sometimes in competition and too often without thought to optimal outcomes. **We recommend that, through the NEWP, Defra sets out a framework to deliver better integrated and prioritised environmental messages to farmers and their advisers.**

The Nitrates and Water Framework Directives

6.05 A wide range of regulatory and non-regulatory mechanisms seek to tackle diffuse pollution from agriculture⁵⁵. During our evidence gathering, most interest focused on the Nitrates and Water Framework Directives (and the Nitrate Regulations⁵⁶ that implement the Nitrates Directive in England).

6.06 The EU Nitrates Directive requires EU Member States to identify waters affected by, or at risk of, nitrate pollution and to designate those areas as Nitrate Vulnerable Zones (NVZs), or to designate their whole territory as an NVZ. Farmers in England in an NVZ (62% of the country) are required to adhere to measures set out in the Nitrates Action Programme. The next review of the Regulations that implement the Nitrates Directive in England is due by 2013; Defra will consult later this year.

6.07 The aim of the EU Water Framework Directive is to bring together all water environmental legislation within a coherent integrated framework. Member States must try to reach good status in surface and groundwater bodies by 2015. The Directive also requires Member States to set up River Basin Management Plans containing measures to address the reasons for poor status. The Government published its first plans in 2009 (the next are due in 2015); its focus is now on targeted implementation. Measures to address diffuse pollution from agriculture include those actions necessary in NVZs, relevant cross-compliance measures, advice and limited capital grants through Catchment Sensitive Farming, agri-environment options and the targeted use of enforcement powers such as Anti-Pollution Works Notices.

⁵⁵ These include: the Nitrates Action Programme under the Nitrates Directive, measures included with the River Basin Management Plans to deliver the Water Framework Directive, Statutory Management Requirements and Good Agricultural and Environmental Condition standards under cross-compliance, farm assurance, advice schemes and the Campaign for the Farmed Environment.

⁵⁶ We refer to the Nitrate Pollution Prevention Regulations 2008 as the 'Nitrate Regulations' throughout this report.

Views from our consultation

6.08 At the outset of our work (and aware of industry views), Ministers identified the current nitrates regime as over-complex and burdensome. Ministers asked us to recommend an alternative system that married effectiveness with simplicity – and that would contribute to the upcoming review of the Nitrate Regulations.

6.09 During the evidence gathering we heard concerns from livestock keepers in particular, (including those farming organically/extensively) and from other interest groups such as non-governmental organisations (NGOs). The overall view was that the Nitrate Regulations were poorly framed. Many consultees felt that the Regulations are too blunt to deal with the complexities of waterborne nitrate pollution. Others felt that Government was not using the scientific evidence to make a compelling case for action – although they acknowledged that the evidence is complicated. Others commented that inconsistent implementation of the Directive by Government in the past has reduced buy-in to the whole diffuse-pollution agenda by farmers. We heard that the proliferation of complex measures being used to tackle diffuse pollution makes it hard for land managers to decide what actions are appropriate, and under what initiative or regime. It is almost impossible for them to look holistically at the diffuse pollution problem.

6.10 We heard illustrations of the ‘law of unintended consequences’. Certain rules in the Nitrate Regulations were seen as counterproductive to delivering desired outcomes, providing perverse incentives to good farming practice. An example is the so-called ‘National Slurry Day’: at the end of the fixed national closed period when organic manure cannot be applied to land, farmers simultaneously start to empty slurry stores, spreading the contents on their fields. This increases the potential for environmental damage, by concentrating the spreading in a short period throughout a catchment. In addition, storing manure for several months in anaerobic conditions leads to methane production, a potent greenhouse gas, and to the release of ammonia emissions that elsewhere farmers are seeking to reduce (paragraph 6.69).

6.11 We also heard a general view that current requirements for demonstrating compliance with the Nitrate Regulations are overly complex. Key complaints were the calculation processes based on the information in the guidance booklets, the length and complexity of the guidance booklets themselves (nine in total, running to over 100 pages), and the onerous requirements to write plans, draw up maps, and keep detailed records⁵⁷.

6.12 In contrast to the largely negative views of the Nitrate Regulations, we mainly received favourable feedback about the Water Framework Directive. We were struck by the general consensus that taking a catchment-based approach to diffuse pollution is both sensible and likely to be more effective because it is based on local evidence and local action. This was balanced by nervousness over the prospect of future regulations in the form of Water Protection Zones which would be an additional burden of legislation.

Package of recommendations

6.13 We are convinced by the need to protect all waters from diffuse pollution and, where appropriate, to achieve a reduction in nitrate levels. While the evidence shows that nitrate levels are generally declining in rivers, not least because of reduced fertiliser use over the last 20 years, some concentrations remain high and there remains a significant problem with nitrates in some groundwater.

6.14 However, we are clear that the current system of regulation for addressing nitrate pollution is flawed. The Nitrate Regulations are a blunt tool that is focused on process rather than outcomes. The

⁵⁷ Records have to show artificial fertiliser applications, and weights and nutrient contents of manures and slurry applied on a field-by-field basis.

balance must be redressed – to the benefit of the environment as well as farmers. In the short term, Defra can do so by reducing burdens of paperwork and by refocusing the Regulations so they concentrate on achieving the objectives of avoiding pollution (paragraphs 6.16–23). With an eye on the future review periods for both the Nitrates Directive and Water Framework Directive, we outline proposals for a longer-term approach which we think could be operational within the next five years (paragraphs 6.24–34).

6.15 Recalling our strategic recommendation that the farming industry become more involved in designing voluntary initiatives as part of a partnership approach (paragraphs 2.08, 2.11), **we recommend that farmers use initiatives such as the Campaign for the Farmed Environment to encourage water protection measures.** Government must stand ready to encourage the creation of such partnerships, which could obviate the need for future use of regulation.

Record-keeping and calculations

6.16 The current system of record-keeping, supported by a series of guidance booklets, is particularly burdensome. We accept that EA inspectors may require some records to assess compliance. But we think that there is scope to reduce a lot of it. We are pleased that the imminent review of the Nitrate Regulations will examine paperwork. **Overall, we recommend that the review of the Nitrate Regulations significantly reduces the paperwork, including the need for detailed plans and maps. It should also reduce the complex calculations required of farmers, particularly in relation to manure and slurry.** To assist with the review we make a number of specific recommendations in paragraphs 6.17–20.

6.17 **In terms of compliance, we believe it is necessary to have only a record of the amount of nitrogen applied per field in organic and inorganic form.** (Government should trust that farmers, in recording this amount, have taken into account the relevant crop requirements and soil nitrogen supply.) It is good practice to have a nutrient management plan. However, we do not believe that the lack of a detailed plan should be a failure at inspection. The outcome is good nutrient management itself, and avoidance of pollution. **In line with our earned recognition proposals (paragraph 3.23), where farmers have a detailed nutrient management plan we recommend that they could earn the right to be less frequently inspected.** This gives an incentive to the farmer to go to the effort of preparing a plan: earned recognition incentivises good practice.

6.18 Central to our proposed earned recognition approach is the use of the Farming Theme of Business Link (paragraphs 2.38–40, 3.28). This currently allows users to access an ‘NVZ planning tool’. **We recommend that the Farming Theme of Business Link should be expanded to enable farmers to submit electronic copies of nutrient management plans online.** Under this model, farmers would allow the EA to see these forms; this would inform them about the farm’s level of risk. In turn, this will help the EA effectively target its inspections. **To complement this, we recommend that Defra, the EA and trade associations jointly encourage better take-up of PLANET, the Defra-developed nutrient management software that helps with doing the calculations and keeps records.**

6.19 Currently, farmers have to apply to the EA for an annual derogation which allows them to exceed the ordinary livestock manure nitrogen farm limit of 170 kilograms of nitrogen per hectare (kgN/ha), and to spread up to 250 kgN/ha. We believe that this is over-burdensome. **We recommend that this application for a derogation could be incorporated into the SPS claim, with the RPA then sharing this information with the EA⁵⁸.**

6.20 We understand that very few farmers are likely to exceed the NMax limit⁵⁹. We agree that, where a farmer looks likely to be close to the limit, this calculation should be completed once to give an indication

⁵⁸ We recognise that this is reliant on the EU granting a further derogation.

⁵⁹ NMax means the maximum permitted amount of nitrogen from any source that a crop may receive. However, it does not apply to all crops.

of likely risk, but **we recommend that a new NMax calculation should be required only when a significant change in farming practice takes place, or the fertiliser recommendations⁶⁰ change substantially.**

Exemptions for organic and low-intensity farming systems

6.21 During our evidence gathering, we discovered that many of the requirements under the current Nitrate Regulations are inappropriate for certified organic farmers – yet such farmers still need to comply. Organic farmers operating in NVZs are subject to dual regulation (i.e. about organic farming and nitrates) – with no benefit to overall outcomes. **We recommend that if an organic farmer in an NVZ is fully certified by a relevant organic certification body, the organic land should be assumed to be compliant with the Nitrate Regulations and the farmer should not have to carry out the additional record-keeping.**

6.22 Blanket record-keeping requirements are also disproportionate for low-intensity farms, such as those which have low stocking densities and where nutrients are applied at levels much lower than limits in the Regulations. Examples of low-intensity operations include conservation-grade farming, low-intensity beef farming, or hill farming. **We recommend that the Government takes a lighter-touch approach to record-keeping for low-intensity farms within an NVZ. We propose that the forthcoming Nitrate Regulations exempt these farms from the record-keeping requirements. We recommend that farmers should either complete a self-declaration or use an accredited adviser to claim this exemption.**

Review of rules for the use of organic materials with low readily available nitrogen

6.23 We received concerns that the application of the nitrogen field limit is inappropriate for some slow release organic manures like compost. Such materials (including green compost, dredging and water treatment cake) have a very low rate of nitrogen release; the risk of serious leaching into the environment is low. The current field limit does not allow enough of these materials to be used to satisfy plant needs. We are concerned about this impact, particularly given the desirability of increasing soil organic matter to improve soil structure. **We recommend that Defra revises the rules to allow for higher limits on the nitrogen content of slow release nitrogen organic materials under the Nitrate Regulations.**

Recommendations for long-term change

6.24 We believe that the best way for farmers to address nitrate pollution from agriculture is to focus effort at a local level. This local approach is also consistent with our view of opportunities in the Coalition Government's localism agenda. Farmers will be convinced for the need for action if they can see the evidence for themselves. It would also allow them to ask the EA to tackle other common pollution sources in rural areas, such as soak-aways from domestic septic tanks and small rural sewage works, to produce an overall reduction within a catchment.

6.25 Some farmers have already demonstrated an interest in this approach, through participation in Catchment Sensitive Farming. We support the Government's announcement in March 2011 that it will use a catchment-based approach to implement the Water Framework Directive, initially in 10 catchments. It makes sense to tackle all aspects of diffuse pollution together, rather than nitrate on its own. This also helps minimise 'pollution swapping'.

6.26 **So, in the long term, we would like to see measures to address nitrate pollution integrated within river basin management planning and delivery. We hope that, over the next five years, a catchment-based approach to managing all the pressures on the water environment could be operational across England.**

⁶⁰ Fertiliser recommendations as contained in the Defra ['Fertiliser Manual'](#) (RB209).

6.27 The farming sector should work with the EA to reach a shared understanding of the evidence of pollution locally and agree the measures to deal with it. Where there are no problems identified (e.g. low levels of nitrates in surface or ground waters), no additional action should be required.

6.28 We think a catchment-based approach is more likely to work than inflexible national measures. The current national measures take no account of local climate, growing season or other local needs. In short, a catchment-approach offers precise solutions to local problems.

Key actions needed to integrate nitrate reduction with a catchment-based approach to nitrate pollution

6.29 We believe that the first step should be to collect and clearly communicate the local evidence of the problem. The case for local action must be supported by local data. In recent years, the science underpinning the Nitrate Regulations has improved with better modelling and monitoring of surface and groundwater. We do not necessarily advocate wide-scale gathering of new evidence. However, we believe that the case for a local approach to managing diffuse pollution and sediment would be strengthened by gathering and using all existing data, regardless of who collected it.

6.30 A catchment-based approach could be considerably helped by following the examples of some partnership and cross-sector projects underway. Examples include the joint EA and NFU phosphate project in the Anglian Region and South West Water's Upstream Thinking project. **We recommend that the farming industry works with others to roll out catchment-based projects to demonstrate that nutrient pollution can be tackled locally and effectively.**

6.31 In the immediate future, we understand it is likely to be necessary to complement a local approach with some national measures in NVZs. Two such measures may be: closed periods (during which time artificial and organic nitrogen cannot be applied to land) and adequate storage facilities for manure and slurry.

6.32 We are content with the current closed periods for artificial fertilisers and believe these should remain in place. However, for organic manures, we do not believe that the closed period should be the same in all parts of the country, from Cumbria to Kent and from Cornwall to Northumberland. The significant differences in growing seasons and rainfall should be reflected in this requirement.

6.33 We note that Defra's Impact Assessment which accompanied the 2007 consultation on the Nitrate Regulations concluded that the current closed periods for organic manures were likely to affect nitrate loss by just 0.5–1%. Farmers told us that this very small improvement has been at huge cost in terms of storage and that, taken against outcomes, the measures seem disproportionate. With this in mind, **we recommend that the minimum national closed period for manure and slurry spreading and their storage arrangements in NVZs should be looked at again and also made to reflect local differences. A zonal approach to these, such as in operation in Ireland, could be a useful model. We further think there is a case for staggering the beginning and end of the closed periods so that farmers can make the best use of good weather to spread manure early or late.**

Monitoring progress with an eye to the future

6.34 Should the evidence confirm our view that a catchment-based approach is more effective in improving water quality of both surface and ground water, **we believe there would be a case for the European Commission to look again at the provisions of the Nitrates Directive. Ideally we would like to see an integration of any revised measures under the Nitrates Directive with those of the Water**

Framework Directive in a way that minimises burdens, avoids duplication and preserves outcomes. We think this would fit well with the recent Government announcements on how Defra will seek to implement the Water Framework Directive and will help to better deliver the objectives of these Directives.

Managing water resources

6.35 The increased demand for water is placing ever-increasing pressure on water supply. In particular, summer abstraction causes low flows and therefore less water for water company extraction, agricultural use and environmental needs. This has led to more regulations aiming to better manage the resource. The future for water resource management will be addressed by Defra's forthcoming Water White Paper (due in summer 2011). We suggest some general principles and make a couple of recommendations on specific regulatory issues.

Water White Paper

6.36 There is a need to reform the water resources management regime over the longer term to meet the twin challenges of adapting to climate change and addressing the increasing demand for water. In developing the Water White Paper, Defra should recognise the importance of a sustainable water supply to agriculture and horticulture. This is particularly important in the context of Defra's Business Plan priority on sustainable food production and the recent Foresight Report⁶¹. It will also be important to make sure that this is recognised within the context of the new National Planning Policy Framework (paragraphs 4.10–12).

6.37 **We recommend that Defra take account of farmers as customers of the public water supply, as private water suppliers, as small scale abstractors of water, and take account of farms as a potential source of water storage for agricultural and horticultural use.** Water regulation should be aimed at making winter storage easier, not least because this can have positive ecological consequences (6.41–43).

Water abstraction: problems with licensing

6.38 Current controls seek to manage water in a way that meets the needs of users (e.g. farmers) and the natural environment. Where a farmer wants to abstract over 20m³ of water per day for agricultural use, they must apply to the EA for a licence and comply with its conditions.

6.39 During our evidence gathering, we heard concerns that access to water was getting harder for farming and horticulture. We also heard that the duration of abstraction licences is being progressively reduced. The Water Act 2003 introduced a requirement for a time limit on all new, full abstraction licences, as well as for the transfer of licences. New licences are likely to be issued for 6–18 years; renewed licences are likely to last for 12 years. Due to the high capital expenditure necessary to build the infrastructure for abstraction, farmers are worried by these short durations. Farmers will not invest in this infrastructure without a secure water supply; this is particularly true for winter storage reservoirs.

6.40 A future abstraction regime should provide greater regulatory certainty for farmers and growers, to help them make investment decisions. We note that long duration licences (24 years) may be granted by the EA provided the abstractor meets certain criteria. **So, we recommend the granting of longer water-abstraction licences, with further renewal being permitted as long as the conditions are met. We also recommend that the EA do more to encourage the trading of abstracted water.** For example, a farmer with a reservoir filled over winter could be allowed to use the water to supplement a stream during the summer which could be drawn on by another abstracter downstream for irrigation or public water supply

⁶¹ <http://www.bis.gov.uk/assets/bispartners/foresight/docs/food-and-farming/11-547-future-of-food-and-farming-summary.pdf>

purposes. The state could choose to pay for this sort of summer supplementation of low flows in rivers under an agri-environment scheme.

Avoiding summer abstraction – on farm reservoirs

6.41 One way that farmers can reduce their need to abstract water in summer is to construct on-farm reservoirs in which to store excess winter water. Reservoirs provide a secure supply during the summer, take pressure off public water supplies and leave more for the environment. A move from summer abstraction to winter storage would be beneficial for the environment as well as for agriculture and horticulture: this should be encouraged.

6.42 The Flood and Water Management Act 2010 brought in new arrangements for reservoir safety. When implemented, this will reduce the threshold for registering reservoirs, from above 25,000m³ capacity to above 10,000m³. A lot of farm reservoirs will exceed this new threshold, so this is an increase in burdens. This will potentially require new supervision and inspection arrangements with associated costs (e.g. an inspection by a reservoir civil engineer). This will discourage farmers from building on-farm reservoirs.

6.43 The Act also introduces a screening process which allows the EA to recognise low-risk reservoirs both above and below the present 25,000m³ threshold. We endorse this risk-based approach as it enables the EA to focus on those reservoirs that genuinely pose a risk to public safety. We note that under the Act, Ministers can amend the threshold⁶². **Unless there is strong evidence to the contrary, we recommend that Ministers set the threshold which triggers registration of reservoirs back to 25,000m³.** We also note that the difficulties of obtaining planning permission can act as a further disincentive to farmers wishing to build winter storage reservoirs; we address this problem in paragraph 4.18.

Private Water Supply Regulations 2009

6.44 Water supplies come from a variety of sources, including wells, springs, boreholes and streams; a number of farmers and landowners have private water supplies on their land. Dairy farmers, in particular, often have their own private water supply either to reduce costs or because there is no mains water. The Private Water Supply Regulations 2009 apply to all private supplies of water intended for human consumption (including water used for food production where the water may affect the 'wholesomeness' of the food product). Where water is used in food production, it must meet the drinking water standards.

6.45 Local authorities implement and enforce these Regulations. They carry out risk assessments every five years to establish whether or not the supply poses a significant risk to human health. Local authorities must also sample certain types of supply at varying frequency depending on volume, and may charge for doing so.

6.46 We heard concerns from dairy farmers that water used for washing down is included in this drinking water standard. This imposes significant extra costs because of the testing and monitoring regime required. Where some operations in a milking parlour require the use of wholesome water from a supply, it should be classified as a private supply and monitored as a supply used for food production. However, where operations within a milking parlour do not require wholesome water we do not think the supply should be classified as a private supply. Examples include washing down water, in heat exchangers for milk cooling and livestock drinking water.

6.47 We understand that the Food Standards Agency (FSA) is working with Defra and the Drinking Water Inspectorate on this issue. The FSA plans to issue guidance on the use of private water supplies, including

⁶² Based on evidence, including that collected by the Environment Agency during the early stages of implementation

use in dairy premises, which will clarify the requirements of relevant food hygiene legislation and the relationship with the Private Water Supply Regulations. **We recommend that the FSA acts promptly to issue this guidance.** In the interim, we are pleased that the Drinking Water Inspectorate has encouraged Local authorities to defer risk assessment.

Water Supply (Water Fittings) Regulations 1999

6.48 The Water Supply (Water Fittings) Regulations 1999 prevent the waste, misuse, undue consumption, contamination or incorrect measurement of drinking water. The Regulations set requirements for the design, installation and maintenance of plumbing systems and water fittings, and are enforced by water companies.

6.49 We received evidence that water companies are requiring changes to water fittings and plumbing arrangements on farms. The farming industry is concerned that some water companies are advocating expensive options for compliance rather than explaining risk and giving assistance on solutions with least cost. This particularly concerns outside taps to which hoses may be attached.

6.50 **We recommend that the water industry, through the Water Regulations Advisory Service, reviews its guidance for farms, in collaboration with relevant farming organisations to ensure that compliance is cost effective, practical and relevant to risk.**

Maintenance of seawalls and other coastal/fluvial assets

6.51 Seawalls and other coastal defences are often located adjacent to agricultural land. Many long-established defences were built by farmers and landowners. These defences offer protection from inundation to villages, towns and infrastructure, as well as farmland. A large proportion of our best horticultural or Grade 1 land lies within 3m above sea level and is therefore potentially at risk from flooding by the sea. We recognise the importance for society, the economy and farmers alike of maintaining seawalls: farmers have a commercial interest in ensuring adequate and timely maintenance. Indeed, maintaining defences to avoid the loss of productive farmland should be considered within the context of Defra's Business Plan objective to produce more food sustainably.

6.52 The EA has permissive powers to maintain sea defences. During our evidence gathering period, we learnt that there are circumstances where some maintenance will be discontinued by the EA, because of cost and because only agricultural land is protected. We welcome the recently published *Asset maintenance policy protocol for sea defences* ('the Protocol') which was developed by the EA in consultation with representatives of the NFU, the Country Land and Business Association and Natural England. The Protocol applies to situations where the EA plans to cease maintaining sea defences. We welcome the EA's intention to provide clarity for landowners wishing to maintain defences themselves.

6.53 In order to maintain seawalls, farmers require the EA to determine what consents are needed. We learnt that this can discourage farmers from getting involved. Farmers have further commented to us that they are unclear what activities constitute 'maintenance', and thus require consents from the EA.

6.54 We think that Government should do everything it can to reduce barriers to farmers and landowners managing these communal assets. The EA is taking a risk-based approach to consenting to determine the minimum possible consent requirements. It also issues 5-year consents so farmers do not need to reapply annually. **We recommend that Defra and the EA press ahead with plans to streamline the consenting system. We also recommend that outdated byelaws are reviewed. The aim should be to move towards a more risk-based and easier to understand system with time-specific consents for routine maintenance operations.**

6.55 Farmers and landowners may face the prospect of erosion and compromise of sea defences after the withdrawal of maintenance by the EA. Under these circumstances many landowners may wish to maintain seawalls themselves. Whilst we endorse the EA's intention to share with landowners information related to the assets (i.e. hydrological information and costs) that would help inform their decision, **we believe the EA should be required to actively encourage and facilitate the involvement of landowners who come forward with proposals to maintain defences that would otherwise not be maintained.**

6.56 Finally, we note that there is less clarity around the situation for fluvial defences, where farmers may also wish to be involved in managing assets themselves. We hope that the Protocol will soon be expanded to cover fluvial defences. We believe the same principles should apply to encourage farmers to play a part in maintenance works.

Environmental Permitting Regulations: Integrated Pollution Prevention and Control and waste

6.57 Under EU law, a number of activities relating to waste management and Integrated Pollution Prevention and Control (IPPC) require a permit or a registered exemption. These are issued and monitored by the EA. The Environmental Permitting Regulations 2010 replace the previous Waste Management Licensing and IPPC permitting regimes⁶³. Most farms produce agricultural waste and so are covered by the waste management requirements. The IPPC requirements currently only affect the intensive pig and poultry sectors.

6.58 Our consultation highlighted some overarching permitting issues, which we addressed in paragraphs 6.59–6.62. Consultees also raised issues specific to waste and IPPC, which we address in paragraphs 6.63–6.68 and 6.69–6.81 respectively.

Overarching permitting issues

6.59 We heard concerns about the complexity of the process, and delays in issuing permits. Respondents also suggested combining planning applications with environmental permitting applications.

6.60 We welcome efforts by the EA to make the permitting system more understandable (see box on the next page), and to reduce delays.

6.61 However, we believe more could be done: this is one area where more guidance for farmers would be valuable. Therefore **we recommend that the EA, working in partnership with specialist trade associations, should:**

- **tailor the environmental permitting application form and the accompanying charging note to the agricultural sector;**
- **identify a checklist of information that needs to be submitted with each application;**
- **produce a Standard Operating Procedures (SOP) note that sets out the service standards that farmers can expect; and**
- **produce guidance to help farmers best navigate the parallel planning and permitting processes; in order to ensure consistency and to make the processes expeditious, the EA should lead on aspects of applications covering local wildlife sites.**

⁶³ The framework also covers water discharge and groundwater permits, permits associated with radioactive substances regulation and the permitting aspects arising from the Mining Waste and Batteries and Accumulators Directives.

6.62 We welcome the steps that the EA has taken to enable farmers to submit electronic copies of paperwork for permit applications. **We recommend that the EA should examine options for online permit applications. We recommend that the Farming Theme of Business Link (paragraphs 2.38–40) should become the hub for registering exemptions and applying for permits. Farmers registering on this site should have simple waste exemptions and their waste-carrier registration registered automatically.**

Making environmental permitting easier to manage: process-mapping with the pig industry

A working group involving the EA and the National Pig Association examined ways of improving the permitting process for the pig industry. The group examined the farmer journey through the permitting process, from initial decisions about production, through to receiving a permit. This helped identify blockages and suggest improvements.

The result was an industry-developed ‘step-by-step guide’ for operators and a number of other actions which are now going forward. In particular this helped encourage farmers to consider permitting issues from the start of their planning.

The working group showed the importance of involving industry in finding the right solutions and delivering guidance for their operators. The better applications that result from this work, as well as internal changes, are helping the EA to continue to reduce the time to process permits. This means that pig farmers are now less likely to face frustrating delays in developing their business.

Waste management

6.63 Waste management regulations play an important role in protecting the natural environment, delivering a ‘Zero Waste Economy’⁶⁴ and protecting human health. Most of the regulations stem from the collective EU aims of ensuring a single market and a shared level of environmental ambition. Waste legislation provides for two tiers of controls for waste activities: permits and exemptions. In order to carry out all exempted activities, farmers must register with the EA.

6.64 The Government’s current Waste Policy Review is examining all aspects of waste policy and delivery in England. One of its main themes is to reduce unnecessary regulation by ensuring that controls are proportionate and risk-based. The review aims to reduce the regulatory burden on compliant businesses. It also seeks to focus effort on addressing illegal operations and activities that have adverse impacts on people or the environment and which disadvantage compliant businesses.

6.65 In evidence, we heard that many are concerned that the broad definition of waste unnecessarily hinders farming activities. There were calls for a reduction in regulatory barriers wherever it would not reduce standards. We received suggestions for ways of simplifying the registration of exemptions. There was support for the development of protocols to encourage waste recovery. There were concerns about the regulatory barriers to composting, such as the requirement to register for exemptions or obtain permits and the burdens of regulating spent mushroom compost as waste. A number of consultees highlighted the problem of fly-tipping on private land, and called for further Government action to address this. There was concern about the arrangements for registering businesses that regularly carry waste.

6.66 We believe that some on-farm activities involving waste are rightly controlled through permits and exemptions. Other activities, however, appear to pose a low environmental and health risk. **We recommend that waste regulations should be as light touch as possible, to grow trust with the industry.**

⁶⁴ <http://ww2.defra.gov.uk/environment/economy/waste/>

We believe that a three-tier approach to regulation and exemptions is needed, as below. Where appropriate, Defra may need to renegotiate the Waste Framework Directive to achieve this.

- **Tier 1:** The following on-farm activities, which may be of negligible risk, could be covered by a general licence (see paragraph 2.30). Activities could then be carried out without any registration: use of waste for a specified purpose (category U8); spreading waste on agricultural land to confer benefit (e.g. ditch dredgings and waste milk (U10); use of mulch (U12); incorporation of ash into soil (U14); pig and poultry ash (U15); treatment of waste wood and waste plant matter by chipping, shredding, cutting or pulverising (T6); deposit of waste from dredging of inland waters (D1); deposit of agricultural waste containing a plant tissue under Plant Health Notice (D4); burning of waste in the open (e.g. hedge trimmings and crop residues) (D7); spreading liquid milk; burning waste plant tissue; and small-scale composting.
- **Tier 2:** For all remaining low-risk activities that require an exemption or permit, farm businesses should only need to register or apply once. These are activities that could be carried out anywhere without the need for site-specific assessment. The exemption should continue until notice is received from the farmer. Farmers should be able to develop earned recognition for carrying out these activities effectively. One further way of earning recognition would be if the farmer has a contract with a recycler to take away plastics. The recycler could handle the registration for the farmer and the EA could recognise that they are dealing with a business that has third-party involvement in the management of waste. The EA should publish and adopt a pragmatic, risk-based approach to farm-generated wastes and, in consultation with farmers, develop 'low-risk waste positions'.
- **Tier 3:** For activities that are medium- and high-risk and/or involve hazardous waste, individual site-specific permits should continue to be required. These are activities that would need site-specific assessment, such as merchant anaerobic digestion plants.

6.67 Work between Defra and the EA to develop national End-of-Waste Protocols has had some success in helping to recover material that would otherwise have been labelled as waste. Existing relevant protocols for the farming and food-processing sectors are on compost and anaerobic digestate. The protocols reduce regulatory burdens on farmers. In some cases they may also generate increased farm income or offset costs of buying raw materials. They offer further potential, so **we recommend that Defra and the EA should work with the farming industry to further develop national End-of-Waste Protocols for appropriate farm waste.** We also endorse work by regulators to advise farmers of how they can best recover resources (see box below).

Farmers' guide to recovery of waste by land spreading

The Waste and Resources Action Programme, the NFU and the EA are working together to produce a brief guide that advises farmers on recovering waste as a resource, thus providing an alternative to traditional fertilisers and soil conditioners. The guide will highlight the benefits of using these recovered resources, but also set out the risks and what to look out for. It will provide advice on the sort of information a farmer should seek before accepting recovered material so that the supplier, farmer and environment can all benefit.

6.68 We are concerned at the extent of fly-tipping and the associated clearance costs. We sympathise with those who have suffered from this. We are encouraged by a Defra-funded project with the NFU and the EA, which will help inform further Government action. We hope that this will lead to more effective control and prosecutions. **We believe that farmers should not be penalised by having to treat fly-tipped material as business waste. We recommend that the EA should reclassify fly-tipped material on farms as household waste, so that farmers can dispose of it at council waste sites at no cost.**

Integrated Pollution Prevention and Control (IPPC)

6.69 The EU Integrated Pollution Prevention and Control Directive requires regulation of pollutants from a wide range of industrial activities. Installations for the intensive rearing of pigs or poultry need a permit from the EA if they have capacity for more than specified numbers of animals⁶⁵. The permits have to address likely significant emissions from these installations, notably ammonia and odour, which affect the environment. Around 88% of UK ammonia emissions originate from agriculture as a whole. There has been a national UK emissions limit for ammonia releases⁶⁶, which derives from an international protocol and EU legislation⁶⁷. This 'ceiling' is currently being renegotiated, and is expected to be tightened.

6.70 The EU Industrial Emissions Directive prescribes a minimum frequency of once every three years for site inspections. The Directive also tasks the European Commission with undertaking a review, to be completed by the end of 2012, of whether emissions from cattle should be controlled under this or another EU regime.

6.71 The conditions attached to permits are various: from type of animal feed and diet, through manure management, to building design. The conditions must be based on the application of Best Available Techniques (BAT) as set out in an EU reference document and EA guidelines. The EA checks compliance and takes enforcement action under the regime.

6.72 The EA considers the potential impact of aerial emissions on nature conservation sites from all industrial installations (including intensive pig and poultry farms above the IPPC threshold). The IPPC Directive requires that no significant pollution should be caused. The EA is responsible for investigating complaints about nuisance issues arising from farms, such as odour, noise or dust. Action taken by the EA may include abatement plans, and, ultimately, suspending or revoking an environmental permit. The EA has been working with the NFU to reduce the inspection burden of the IPPC regime for farmers (see paragraph 6.74).

6.73 During our evidence gathering, we heard a range of views about:

- the limits at which permits should be required, which are set according to the number of livestock places, rather than actual livestock numbers. Some respondents argued that the limits are too low, as they deter poultry farmers from expanding, which in time could render some units uneconomical;
- whether IPPC controls are appropriate for farming, since they were designed for big industry;
- the challenges of satisfying requirements for nuisance control and the potential impact of ammonia, including on sensitive habitats. These issues have tended to affect farms in close proximity to non-farming neighbours (particularly private dwellings) or sensitive habitats (such as Sites of Special Scientific Interest and non-statutory 'local wildlife sites', which are designated for their high biodiversity value but do not receive full protection);
- whether local wildlife sites warrant the description of sensitive habitats and therefore protection. Some respondents felt that the evidence base for protecting these sites is not always clear, and that the arrangements for controlling ammonia lead to unwarranted costs for farmers in return for no large improvement in environmental benefit;
- the problem of 'bad neighbour developments', whereby planning approval is given for developments that bring houses to the farm boundary and thereby give rise to nuisance complaints against the farm; and

⁶⁵ 750 sows, 2,000 fattening pigs over 30kg and 40,000 poultry (including chickens, layers, pullets, turkeys, ducks and guinea fowl)

⁶⁶ A national UK target of 297 kt ammonia emissions per year by 2010

⁶⁷ The Gothenburg Protocol, under the UNECE Convention on the Long-Range Transport of Air Pollutants and the National Emissions Ceilings Directive, 2001/81

- repeated and vexatious complaints made against farmers about nuisance issues such as odour, noise and dust. It was suggested that, although many of the farms concerned are recognised as meeting or exceeding best practice, there was a sustained campaign against them by local residents.

“Sites with neighbours complaining about odour are being subjected to lengthy and costly trial-and-error odour abatement plans by the EA. We need some means of distinguishing serial individual complaints from cases where there [is] a genuine complaint to uphold.”

National Farmers’ Union

6.74 The IPPC Farm Assurance Scheme is an exemplar for other forms of ‘earned recognition’. The scheme aims to reduce inspection burdens for pig and poultry farmers that are covered by the IPPC scheme and are meeting separate certification scheme standards. The scheme is described further in the box below paragraph 3.21. **If the scheme shows continued standards of compliance, we recommend that the EA should consider further significant reductions in inspection frequency.**

6.75 We have weighed up evidence on whether the limits for requiring permits are set appropriately. Overall, we consider that IPPC controls seem heavy handed for micro-businesses and SMEs. Therefore **we recommend that if there is any opportunity to remove farming altogether from IPPC controls then it should be taken.** If this is not possible, **we recommend that the thresholds for applying IPPC to pig and poultry businesses should remain unchanged, and that IPPC should not be extended to cattle.** Rather than being based on livestock places, **we recommend a long-term objective of basing the limits on actual numbers of livestock housed.**

6.76 Under the EU Birds Directive and the EU Habitats Directive, the UK must ensure the protection of certain wildlife and habitats outside protected areas, and this may include local wildlife sites. The Lawton Review report, *Making space for nature*⁶⁸, also recommended that local wildlife sites need to be improved and protected. However, the range of protection (including IPPC controls on each site and designations of local wildlife sites) needs to be balanced and made transparent. It is also in the interest of local communities that the process for designating non-statutory sites is robust. It would undermine the integrity of the local wildlife site system if sites were inappropriately designated. We have heard anecdotes about this happening.

6.77 We are pleased that the EA is involved in a joint working group, set up with Natural England and the Countryside Council for Wales, to review the evidence of impacts of nitrogen on nature conservation. Communications were set up at an early stage with Defra and the Welsh Assembly Government, and also with representatives from industry groups.

6.78 We think it important that the potential risk of impact from pig and poultry farms on local wildlife sites should be appropriately considered in applications. But the process needs to be nationally consistent, based on an objective assessment of risk and evidence-based science. Clear reasons need to be given for decisions. Therefore **we recommend that the EA:**

- should have an objective process for dealing with applications for installations that could impact on new and existing local wildlife sites;**
- should demonstrate that it has assessed the risk properly, accurately and consistently;**
- should base decisions on sound science;**
- should give considered reasons for requiring applicants to model possible impacts; and**
- with others, should make it easier for industry to access public records on sensitive sites, including local wildlife sites, to help ensure that operators are properly informed when making applications.**

⁶⁸ <http://www.defra.gov.uk/environment/biodiversity/documents/201009space-for-nature.pdf>

6.79 Intensive livestock units do have noise and smell implications and, clearly, the public has a right to complain about excessive odour and nuisance. But if objections are to be taken seriously, they must be based on reasonable evidence. Equally, industry needs to identify and implement best practice to tackle excessive odour and nuisance. In dealing with complaints, **we recommend that the EA should establish a mediation scheme to address persistent or vexatious complaints regarding odour, noise and other nuisance issues.**

6.80 Industry has formed its own working group to examine available best practice and solutions for addressing odour at intensive poultry sites. The group is meeting regularly, and is being supported by EA technical input. The aim is for industry to adopt solutions voluntarily, so avoiding the need for the EA to amend permits and force changes. As the industry develops guidance, the EA is continuing to work with sites and affected communities to identify solutions to particular problems. We strongly commend this approach, which combines partnership (paragraph 2.11), trust and responsibility (paragraph 2.10), and localism (paragraphs 4.06–09).

6.81 Against the background of the localism agenda, it is difficult to envisage changes to the planning regime in order to avoid ‘bad neighbour developments’. However, as a general principle, **we recommend that local planning authorities should consider the possible impacts on new housing developments from existing local farms before granting planning permission.** Similarly, where new local wildlife sites are created if they have existed side by side with intensive farming for some time, this should be seen as a sign that one has not threatened the other up to the time of designation.

Energy

6.82 The Coalition Government has committed to increase energy from renewable sources⁶⁹. Farmers and food businesses could play an important role in this, but they need to be encouraged by streamlined planning and permitting processes (paragraphs 4.43–44), the right incentives and minimal legal complications.

6.83 Increasing numbers of farmers and food businesses want to exploit renewable energy. However, wherever we went it was highlighted to us that there are numerous barriers that discourage them from investing. We heard how the legislation and application processes can be hard to understand, application timescales for renewables installations can be lengthy, policies change frequently and the approach across Government agencies can be inconsistent. Our particular attention was drawn to the difficulties of obtaining planning permission, permits and the complexities of the changing landscape of Feed-in Tariffs. This means that it is very difficult for relatively small businesses to navigate these massive administrative burdens in order to be able to plan and invest with confidence. **We recommend that Government must be consistent in its policies on renewables, and must provide businesses with long-term certainty and simple application processes that can be dealt with quickly.** We cannot underline too much that until all of this happens and the processes are simplified, the country’s objectives to achieve renewable energy from farms and food processing businesses will inevitably remain unachievable.

6.84 What follows are recommendations on specific matters that respondents raised with us. In some cases, such as energy from waste, the Government is already taking action to encourage industry to invest in renewables. However more remains to be done in the other areas highlighted. We address planning system barriers to renewable energy developments in paragraphs 4.43–44.

⁶⁹ http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf

Energy from waste

6.85 The Government is committed to making better use of waste as a source of energy, including through anaerobic digestion. Environmental permitting controls apply to anaerobic digestion where it involves the recovery or disposal of waste. The EU Waste Incineration Directive applies to incinerated solid or liquid materials that are classified as 'waste' under the Waste Framework Directive.

6.86 We heard that these controls are making energy from waste uneconomic. There were calls for the combustion of manures such as poultry litter to be exempted from controls under the Waste Incineration Directive, and for on-farm anaerobic digesters to be subject to a 'lighter-touch' regulation than larger centralised waste-licensed 'merchant' plants. There was a call for the Government to raise awareness of the opportunities of anaerobic digestion, and for Government to be more proactive about its goals for anaerobic digestion. It seems to us a nonsense that there is readily available fuel for energy from agricultural waste and manures (e.g. poultry litter) which otherwise might be a pollution problem (e.g. causing diffuse water pollution), all at a time when renewable energy is desperately needed. We are concerned that discussions between Government and agencies to find win-win solutions are often bogged down in detail. **We recommend that a higher-level resolution must be found on the issues around the combustion of manures to generate energy.**

6.87 We are encouraged by the Government's work so far to address the barriers to anaerobic digestion, such as introducing a new exemption in 2010 for anaerobic digestion of agricultural waste, and, on permitting changes. However it seems to us that the number of on-farm anaerobic digestion plants is far lower than needed. **We recommend that the Government should be ambitious in its Anaerobic Digestion Strategy. This should set out a range of actions to promote a dramatic increase in the numbers of anaerobic digestion plants for agricultural waste. It should include projections to illustrate the growth in numbers of facilities that the Government expects can result.**

Carbon Reduction Commitments and Climate Change Agreements

6.88 The Carbon Reduction Commitment (CRC) and Climate Change Agreements (CCAs) both aim to reduce UK carbon emissions. CCAs are directed primarily at energy-intensive organisations, whereas the CRC is mainly focused on sectors that are not energy intensive.

6.89 We received comments that tightening the targets could drive participants away from the scheme. Reductions in rebate, coupled with the administrative burdens of scheme membership, could make the scheme unattractive.

6.90 The Government is currently considering the future of the CCAs and the CRC energy efficiency scheme to ensure that they deliver significant improvements in energy efficiency. We note that decisions on the future of the scheme will be taken in light of announcements in Budget 2011 to extend the CCAs and increase the climate change levy discount on electricity for CCA participants. **We recommend that any future scheme is responsive to the needs of the farming and food-processing sectors, whilst helping to secure further significant reductions in emissions.**

Energy Crops Scheme

6.91 Through the Rural Development Programme for England (paragraph 11.06), the Energy Crops Scheme offers grants to farmers in England for establishing miscanthus and short rotation coppice for their own energy use or to supply power stations. Being classified as 'business modernisation' rather than 'land management', the scheme falls under Axis 1 of the Programme, which means that financial assistance must be provided on the basis of actual costs incurred by recipients. We heard concerns about poor take-up of

grants because of the complexity of the scheme. Farmers were being discouraged by the bureaucracy and timescales involved in making applications and claims. Respondents felt that the pre-2006 flat rate scheme was much simpler to understand. **We recommend that, as part of negotiations on the Common Agricultural Policy 2014–20, the Government seeks to reform the Energy Crops Scheme to remove barriers to its take-up.**

Other environmental issues

Environmental Impact Assessment Regulations

6.92 The Environmental Impact Assessment (Agriculture) (England) (No.2) Regulations 2006 transpose EU legislation that requires Member States to assess the environmental impact of intensive agriculture on uncultivated land and semi-natural areas. The regulations require an environmental impact assessment (EIA) for any proposed agricultural improvement on any such semi-natural area over 2 hectares. During evidence gathering, we received a representation in favour of reducing the threshold to a 0.5 hectare limit, to increase the protection for important types of grassland. Others, however, argued for the threshold to be raised above 2 hectares.

6.93 We understand the need to protect even small valuable pieces of biodiverse grassland, but the current approach does not appear to adequately separate these from the many more bits of grassland that do not have the same value. We do however recognise that the EIA Regulations form only part of the approach to the protection of important grassland. **As part of Natural England's current review of the EIA guidance, we think Natural England should establish a better way to identify these valuable sites to enable their protection. The upcoming review of the guidance on the use of the Regulations provides an opportunity to do so and we would encourage all stakeholders to participate fully.** In the meantime, we are content that the current threshold (which Defra set after formal consultation with stakeholders) probably strikes a reasonable balance. We also note that this threshold is significantly lower than the threshold that other Member States use to trigger the need for an EIA and which seems to indicate an element of gold plating.

The Hedgerow Regulations

6.94 Industry consultees did not raise the Hedgerow Regulations 1997 as a concern. We heard about the importance of the Regulations from several environmental groups. **We recommend no change to the current Hedgerow Regulations.**

Chapter 7 The Common Agricultural Policy, Single Payment Scheme and cross-compliance

We recommend that:

- in Common Agricultural Policy (CAP) negotiations, Defra should focus on outcomes not processes, better use of risk assessment, and better use of online facilities, and should ensure that the Single Payment Scheme (SPS) is simplified and the lessons of the 2005 negotiations are not forgotten – specifically that any policy must be capable of being implemented effectively without excessive cost;
- re-mapping is stopped and a single map (showing all external boundaries) used for all CAP schemes, with farmers notifying the Rural Land Registry of any changes to their holdings throughout the year;
- the SPS is available only on holdings of over 5ha of *actively managed* land;
- Commoners should claim the SPS as a group, through their Commoners Associations or equivalent;
- entitlements should be abolished and Defra should oppose the introduction of a cap on SPS payments;
- cross-compliance risk-assessment factors should be reviewed, enforcement made proportionate and guidance made clearer and more accessible;
- a number of cross-compliance conditions should be changed, removed or reviewed;
- the cross-compliance inspection regime be altered to reflect the risk of breach; and
- some crop codes should be removed, entitlements forms changed and RPA appeals and errors processes amended.

7.01 EU negotiations on the Common Agricultural Policy (CAP) 2014–2020 started in late 2010, and Defra Ministers asked for our preliminary views on regulations. We provided Ministers with this interim advice in December 2010 (Annex 2). We set out our final thinking here.

7.02 Our proposals can be divided into three broad categories: those that affect all aspects of the CAP; those specific to the Single Payment Scheme (SPS), and those specific to cross-compliance. We do not make any specific recommendations on Entry and Higher Level Schemes (ELS and HLS).

7.03 Underpinning our recommendations is our strong belief that there must be environmental conditions attached to the sums of public money that farmers and land managers receive. Our recommendations do not reduce standards; they intend only to simplify the system for recipients and regulators alike.

7.04 In making these recommendations, we must stress that many are not in the unilateral gift of Defra Ministers. However, these issues can and should be negotiated in the current mainstream and related

technical negotiations on CAP 2014–2020, or can be discussed outside of this process with the European Commission.

Common Agricultural Policy

7.05 One of our key principles is simplicity (paragraph 2.07). This particularly applies to the CAP as the overwhelming impression from the evidence we received is that the CAP needs to be simplified. The comments ranged from the difficulty of understanding guidance to needless terms and conditions. Not one response described the schemes as “clear”, “easy to use”, “accessible” or similar.

7.06 We have therefore looked at the European Commission’s proposals for CAP reform⁷⁰ (and our own recommendations) through the lens of the need to reduce complexity. We believe that every CAP proposal should be held up against a ‘simplification test’. In broad terms, as the Task Force Chair briefed the ‘EU CAP simplification experts group’ in February 2011, we find the European Commission’s recent *Communication on the Common Agricultural Policy (CAP) towards 2020*⁷¹ wanting. The Communication has the ambition ‘to continue simplification of the CAP’, but we think it has missed its mark and is a wasted opportunity. It talks of embracing simplicity but appears to introduce questionable levels of complexity. The Communication makes no assessment of how its three options would reduce paperwork for farmers and government agencies. Indeed it appears to propose increasing regulatory complexity rather than reduce it.

7.07 We believe that the European Commission should revisit its proposals for the CAP 2014–20 in the light of our strategic recommendations. **We recommend Defra incorporates the following points into its negotiating brief:**

- **regulations and regulators should focus on outcomes rather than process;**
- **constant reminders of the complexities of 2005 and subsequent costs of administrating the scheme in England;**
- **provision should be made for regulators to demonstrate trust in farmers by developing a system of earned recognition to inform their risk-assessment strategy;**
- **a need to apply a simplification test against all proposals, e.g. capping;**
- **while we welcome the provision in cross-compliance for Member States to use risk to target inspections, the European Commission should remove the disincentive to adopt such an approach and facilitate efficient enforcement;**
- **the European Commission should encourage Member States to improve their use of online tools for gathering information and completing forms, and encourage claimants to employ third parties if they are unable to use IT services themselves; and**
- **barriers to the Energy Crops Scheme should be reduced (paragraph 6.91).**

7.08 Simplification should underpin everything, including the CAP delivery structure. Cross-compliance is an example of a legislative framework that disincentivises a risk-based approach to inspections. Under the current system Member States are obliged to increase the rate of inspection once a threshold level of breaches has been passed. If Member States use risk-based inspections, targeting those most likely to be in breach, they become obliged to carry out more inspections (paragraph 2.53). This is nonsensical. The remedy is swift and simple: **we recommend assessing the breach rate only with the random (and thus probably representative) sample of inspections, and not including the results from an already targeted (and thus unrepresentative) risk-based sample.**

⁷⁰ http://ec.europa.eu/agriculture/cap-post-2013/communication/index_en.htm

⁷¹ http://ec.europa.eu/agriculture/cap-post-2013/communication/com2010-672_en.pdf

7.09 Finally, when considering the CAP 2014–20, **Defra should remember the lessons of previous negotiations.** Structures and processes such as coupled payments, quotas, production limits, set aside and artificial time periods, all add unnecessary complexity. It is important that complex measures such as these are not re-introduced.

Single Payment Scheme

7.10 We heard much about the SPS during our evidence gathering; few issues received more comments. Issues varied from problems with land mapping to concerns that the SPS payment is being claimed by landowners rather than going to those farmers that farm the land. All respondents suggested that the system for claims and of inspections was confusing, complex and overly focused on process.

Mapping

7.11 Many commented on mapping. The general view was that it is time to end ‘constant’ re-mapping, and that regularly completing forms and maps is a burden not balanced by the benefit of adding greater precision to property or field boundaries. We heard that this is exacerbated by the level of detail required by RPA. In turn, this leads to minor errors which prompt RPA to return the forms for reiteration. **We recommend that every effort should be taken to avoid ‘re-mapping’.** A definitive map should be agreed, and this should be altered only when significant changes are notified by the farmer or brought to the attention of the inspector.

“Land mapping should stop – the fields don’t move! Boundaries have changed three times since the RPA’s formation of the payments. RPA changed my field size, without the field growing, by some 0.2ha overall. Meant one extra point for the ELS scheme, which I had been running for over four years without problems.”

Extract from the written submission of an anonymous farmer

7.12 We also heard concerns about the separate maps required for SPS and agri-environment schemes. We see no benefit in this. **We recommend that there is a single map for both SPS and agri-environment schemes.** Claimants could refer to this single map when completing applications for SPS or ELS, making the process much simpler.

7.13 We have also considered mapping and land eligibility from the regulator perspective. **We believe that regulators determining land eligibility should be able to make greater use of remote sensing as a replacement for physical inspections on-farm. We also recommend:**

- that Defra continue to only go to the minimum level of accuracy imposed by the European Commission;
- that Government should continue to push back should the Commission request more accuracy in mapping since this has little benefit for a lot of extra cost.

The SPS form

7.14 The RPA already has a system of pre-populated forms for SPS. However, if a farmer has bought or sold land over the course of the year, this pre-population is not possible. We think this system can be made more efficient and simpler for farmer and RPA alike.

7.15 We know that some in the farming industry are wary of introducing a ‘no change’ option on the land eligibility form. We are mindful of these concerns, but believe we can address them. In line with our proposal for earned recognition (paragraphs 3.12–30), **we recommend that claimants should proactively notify the Rural Land Registry (RLR) of any changes to their holdings (e.g. when land changes hands) throughout the year.** We appreciate that farmers should already be doing this, but in reality many wait until they complete the SPS form.

7.16 This change would ease bottlenecks for the RLR. In turn, this would reduce the prospects of delays in paying SPS and would mean that all farmers could make use of the pre-populated forms already in use. For amendments that result from changes in ownership, the onus should be on the acquirer to notify the land has changed hands, with the signature of the vendor.

What the SPS should be claimed on

7.17 At present SPS claims are made by a claimant completing a form, based on a map which details the boundaries of the holding and all the features within it (e.g. hedgerows, ponds, roads, buildings). The RLR uses the map to calculate the area of eligible and ineligible land on the holding and agrees this with the farmer. Each eligible field is measured to two decimal places as an area of one hundred square metres. This creates confusion as the maps are not accurate enough to show the position of each feature to that level of accuracy; this results in a process of constant re-mapping (paragraph 7.10). **We recommend that Defra, in CAP negotiations, seeks greater simplification through requiring the claimant to map the outer boundaries of the holding and any ineligible areas (such as woods and concrete etc.).** All the remaining land should be eligible. This simplification would remove the need for mapping different fields and separate crops. This would make the form easier for the farmer to complete and simpler for the RPA to administer.

7.18 Some 16,500 SPS claims per year are made each year on holdings of less than 5 ha (see Table 1). The resources required to process these claims are disproportionate to the amount of money received by the claimant. **We recommend that Defra make use of the power Member States have to introduce a minimum size of holding below which the SPS is not payable: in England, we recommend 5 hectares of actively managed land (see paragraph 7.21-22) as an appropriate minimum.**

<i>Claimed area</i>	<i>Farms</i>	<i>% of SPS claims</i>	<i>Average area</i>	<i>Average field size</i>	<i>Average no. fields</i>
<i><5ha</i>	16,500	15.6	2.88ha	0.91ha	3.1
<i>5ha+</i>	89,000	84.4	93.2ha	4.0ha	23.4

Table 1: Comparison of farms in England above and below a 5-ha threshold

7.19 Removing these claimants from the system altogether would assist the RPA, allowing them to focus on their more complex customer base, and process claims more quickly. The unused funds from the 16,500 claims which are currently beneath five hectares should then be re-distributed among the other claims.

Who should be able to claim the SPS?

7.20 During our evidence gathering, we heard concerns about who should be entitled to claim SPS and who should not. The latter were, by and large, individuals who do not manage the land on which they are claiming. We also heard that commoners are finding the system of claiming SPS to be overly complex. We

are aware that there is likely to be a degree of self-interest on the part of those wanting change. But we have tested the concerns against our wider principles.

7.21 The public money that farmers and land managers receive through the CAP must be justified by measurable outcomes that demonstrate how recipients contribute to the provision of public goods, including food production. This is harder to demonstrate if the recipients of the SPS do not manage the land themselves.

7.22 To remedy this, **we recommend that the SPS should only be available on actively managed land, which we define as 'land which is capable or has the capacity to be farmed'.**

7.23 We think that the SPS should only be claimed by those who are managing the land themselves. To that end, **we recommend that the Government should press for the abolition of entitlements.** From 2012, payments can (and in our view, should) be made on the basis of land claimed per annum. The total budget would then be divided by the hectares claimed to arrive at the £/hectare payment. We appreciate that consideration needs to be given as to how this remains WTO Green Box-compatible. However, it is surely right to make payments to those who currently farm, rather than on the basis of history, which (among other things) bars new entrants.

7.24 We believe that Defra needs to address the complexities faced by commoners when claiming SPS. In the absence of agreement between parties, **we recommend that there should be a single payment made to the appropriate Commoners Association (or equivalent). The Association (or equivalent) should be responsible for identifying the active claimants, notifying the RPA and dividing the payment appropriately on the basis of those who are actively farming the common.** We are aware that commoners, by definition, do not own the land they are grazing, but we understand that this approach is already used in the administration of agri-environment schemes for commoners. In line with our view that only those managing land should receive SPS (paragraph 7.21), and those actively farming the land are the graziers, we do not believe this arrangement should require landowner consent.

7.25 The context for our work, as set out in our terms of reference (paragraph 1.15), is to drive simplicity and to support 'a more competitive farming sector'. We believe that introducing an upper limit on SPS payments, as we understand the European Commission is considering, would create a new and unwarranted barrier to farm business competitiveness and would be more complex. We also doubt its efficacy: large agricultural businesses would be broken up and separate claims made for each holding. **We recommend that the Government opposes any proposals in the EU to introduce a cap on direct payments (whether absolute or graduated) for single business claims.**

Cross-compliance

7.26 We believe that cross-compliance is a necessary part of the SPS. It allows SPS recipients to demonstrate their contribution to the provision of public goods and enables the Government to judge value for taxpayer money. Nevertheless, we believe that there is significant room for simplification, both for the recipients (farmers and land managers) and the administrators (the RPA), without compromising outcomes.

7.27 The major themes that came out of the evidence relate more to inspections, enforcement and penalties than the individual cross-compliance conditions (with the exception of the Soil Protection Review, Nitrate Vulnerable Zones and Livestock Identification, which are covered in paragraphs 7.44–48, 6.13–34 and 8.01–28 respectively). Respondents generally had no issue with striving to maintain good environmental outcomes. What they struggled with was the way in which the conditions were inspected

and enforced. Our recommendations cover: inspections (paragraphs 7.28–33); enforcement (paragraphs 7.34–35); guidance (paragraphs 7.36–38); Good Agricultural and Environmental Conditions and Statutory Management Requirements (paragraphs 7.39–55); paperwork (paragraphs 7.56–62); errors and appeals (paragraphs 7.63–64); and miscellaneous points (paragraphs 7.65–66).

Inspections

7.28 We have made clear our view that inspections of farms and food-processing premises should be risk-based. This should apply to cross-compliance like any other regime.

7.29 At present, five Defra bodies have a role in cross-compliance inspections: Animal Health and Veterinary Laboratory Agency (AHVLA), Environment Agency (EA), Natural England (NE), the Veterinary Medicines Directorate (VMD) and the RPA. We believe that this panoply of agencies does not help outcomes and potentially puts too many inspectors on farms. We understand that the EA is in the process of passing over their cross-compliance inspections to the RPA. We welcome this, but think that Defra should go further. We recommend that England should aim to move to a system with one, or at most two, appropriately skilled inspectorates responsible for cross-compliance. We believe that this would improve efficiency. **In our view, the most appropriate organisation would be the RPA, with input where necessary from AHVLA on animal issues (as per paragraph 3.06).** RPA could also potentially assume responsibility for the inspection of the Entry-Level and Higher-Level Stewardship Schemes.

7.30 We would expect EA, NE and other Government agencies to inform the RPA where they see any evidence of breach of cross-compliance. In the event that during a routine inspection the RPA found a cross-compliance breach which required the technical expertise of another agency, such as the EA or NE, these agencies should be able to visit and give views.

7.31 At present, risk-selection factors for inspectors are derived from EU legislation. We believe that Defra should judge whether these factors remain appropriate. **We recommend that Defra reviews EU risk-selection factors, and propose changes as appropriate.** One area that we suggest for particular attention relates to our approach of earned recognition (paragraphs 3.12–16). **We recommend that membership of appropriate third-party assurance and other schemes should form part of the cross-compliance inspector's risk toolkit.**

7.32 **Where inspectors are not already doing so, we recommend that they should start by inspecting a sample of the holding/cattle/passports etc.** Sampling will speed up inspections. Only when the inspector discovers a significant breach should a full inspection ensue. For example, when inspecting animals a sample of tags should be read (say 10%) and only if there is a breach should a full inspection be made. Another example is inspecting field margins; there is no need to inspect every margin on every field on the whole farm (but nor should only the most accessible fields be inspected!).

7.33 We also recommend that inspectors make greater use of averaging. This means that farmers would not be penalised if the net environmental benefit meets the minimum threshold. To take the second example in paragraph 7.31, if the field margin along half the length of the hedge is 1.9m and along the other half is 2.1m, there is a good case for averaging out. We recommend that RPA advise inspectors to use their discretion.

Enforcement

7.34 Throughout evidence gathering, we heard substantial anecdotal evidence of disproportionate enforcement and penalties for minor breaches of cross-compliance. There needs to be a more pragmatic

approach to the enforcement of cross-compliance. **We recommend that enforcement of cross-compliance should focus more on the overall outcome rather than process and exact measurements.**

“We had a cattle passport inspection in early March last year. The inspector found a cattle passport for a calf that had died on the 23rd December. This should have been returned within seven days of death. Otherwise everything for the 370 head herd was in order. Over Christmas snow disrupted our ability to get milk collected and men to work. Low temperatures meant difficulties with keeping drinking water flowing for the cows and the parlour from freezing up. The owner could not work or drive, having had an operation in early December. Under the circumstances the passport was not the priority and unfortunately we forgot about it. The fine we received was £1200.”

Case study for a disproportionate penalty for a minor breach, received during evidence gathering

7.35 As shown in Figure 1 (below paragraph 2.26), where non-compliance is minor, we recommend that regulators should demonstrate trust in business by giving warnings and requiring remedial action to be taken. Where non-compliance is major, we recommend that tough punishments be applied. Specifically, we recommend:

- greater tolerance in the application of financial reductions where the farmer’s ability to control the breach is questionable (e.g. livestock electronic identification) or where a breach is negligible or low impact;
- retention of tough penalties for significant or repeated breaches which damage the desired outcome;
- more frequent use of alternatives to automatic financial penalties (e.g. advice, warnings or guidance on how to comply); and
- removal of the statutory obligation on Government to follow up warning letters with inspections.

Guidance

7.36 Farmers receive a weighty tome of cross-compliance guidance each year. We heard during our evidence gathering that many SPS claimants are so deterred by the length and detail of the guidance that they do not attempt to read it. This is unfortunate – both in terms of making farmer compliance more difficult and wasting Government resource. Unread guidance is an expensive lost opportunity.

7.37 In line with our strategic recommendations on guidance (paragraphs 2.41 and 5.21–22), cross-compliance guidance should be concise and user-centric. Inviting trade associations to play a lead role in drafting it would help (paragraphs 2.18–19). **We recommend that cross-compliance guidance be thoroughly overhauled to become a short, outcome-based ‘summary note’.** This should give clear advice on the requirements that Defra and industry jointly believe are the most important. We also believe all cross-compliance requirements should be ‘field-tested’ by discussing them with farmers to make sure the rules fit with typical farm operations.

7.38 Respondents told us that they were clear about where to seek further assistance on cross-compliance. But they said that those providing telephone advice were often unable to provide the specific guidance they needed, or offered contradictory advice. Any future farm advice system should have better provision for targeted, specific, unequivocal and joined-up advice in a way that is tailored locally to the needs and contributions of local partners.

Good Agricultural and Environmental Condition and Statutory Management Requirements

General approach

7.39 Respondents generally stressed a willingness to comply with the 36 cross-compliance conditions or standards, but many felt that the current system was too complicated and were not always clear what outcome was being sought. During our evidence gathering, we received arguments for removing only one Good Agricultural and Environmental Condition (GAEC) (paragraphs 7.44–48 below), although concerns on others emerged during our analysis. We received suggestions to simplify requirements and move away from a process-based system to one focused on outcomes. We heard that every GAEC and Statutory Management Requirement (SMR) adds time and cost to the inspection process, both for the RPA and farmers. Accordingly, there is a strong better regulation argument to retain only those GAEC/SMRs which add value or for which there is evident reason for continuation.

7.40 Applying our strategic principles of simplification and alleviating unnecessary burdens, and shifting attention from process to outcomes, we have reviewed the 18 GAECs and 18 SMRs. We have tested each of our propositions against our belief that standards must be maintained. We are confident that all our recommendations have passed this test.

7.41 We offer no amendments to the majority of cross-compliance conditions. But our analysis suggests that a handful of GAECs/SMRs are too process-driven. We address these in paragraphs 7.44–54 below. We suspect that these may not be the only conditions which would benefit from improvement. **We recommend that Defra carefully reviews all cross-compliance conditions to ensure that they are properly focused on outcomes as a demonstration of a farmer’s duty of care, rather than unnecessary process, and to ensure that evidence justifies their continuation.**

7.42 We feel it is a poor use of inspector and farmer time for inspectors to be required to continue to inspect conditions which have a very low or nil breach rate. We also note a counter-argument that the very presence of some conditions may have a deterrent effect, and thus should be retained. We appreciate the validity of both perspectives.

7.43 **On balance, we believe it would be consistent with the principles of earned recognition to change/remove standards that have very low underlying breach rates⁷² – on two conditions. First, that there have been adequate inspections that mean that the low breach rate is real. Second, that Government is confident that the value of retaining the cross-compliance deterrent is negligible given the retention of underlying legislation.**

7.44 In paragraphs 7.45–55 below, we make comments on GAECs 1, 11, 12 and 18, and on SMRs including 3 and 10.

GAEC 1 (Soil Protection Review)

7.45 Nearly all consultees who commented on cross-compliance questioned the need for GAEC 1/Soil Protection Review (‘the Review’) and pressed for its removal⁷³. They felt that the Review is a lengthy box-

⁷² In 2009, of the 36 standards (GAECs and SMRs), 11 standards (up from eight in 2008) were not found to be breached by any of those farmers inspected for that standard. Of the remaining 24 standards, there is a fall in breaches recorded for nine standards. In the case of 10 cross-compliance standards, less than 10 breaches were found under each. The top 10 standards breached account for 96.49% of the breaches recorded.

⁷³ In 2010, GAECs 1-4 were merged into a single condition. This single condition covers: GAEC 1 Soil Protection Review, GAEC 2 Post-harvest management of land, GAEC 3 Waterlogged soil, GAEC 4 crop-residue burning residue.

ticking exercise that made no real attempt to judge a farmer's ability to look after their soil. The Soil Protection Review form, with the guidance on how to fill it in, is 52 pages long⁷⁴. Some respondents felt the whole process insulting: farmers recognise that soil is a precious resource, and it is in their self-interest to look after it. Furthermore, a Soil Protection Review does not of itself protect the soil; yet the breach of the condition is in not completing the Review *not* in failing to adequately protect the soil. A good farmer looking after his soil could fail because he has not completed the Review properly. We think this is wrong.

7.46 We appreciate the frustration felt by many farmers at having to complete the Review. We agree that this paperwork burden is overly process-focussed to the detriment of outcomes. In order to re-balance this, and make the regulation more outcome-focused, **we recommend that Defra changes GAEC 1 to a duty of care to protect the soil and to prevent damaging soil erosion, reduce compaction, damage to landscape features and, over the long run, maintain organic matter in mineral soils.**

7.47 However, we are aware of arguments that the very existence of the Review at least *demonstrates* Government and industry's collective commitment to managing soils. We think the Review should be retained for farmers to demonstrate good practice in soil management. **We recommend that completion of the Soil Protection Review remains an advisory feature under GAEC 1 but that not completing the Review correctly (or at all) should not result in a breach of GAEC 1.**

7.48 Should the EA alert RPA to a soil erosion incident or should the RPA find evidence of serious erosion during an inspection, the farmer could be in breach of our proposed duty of care to protect the soil. In such a case, a farmer could demonstrate that s/he has followed good farming practice evidenced by having completed the Review. This would help him show that s/he has done everything possible to prevent soil erosion. However, if there were a history of similar incidents and the farmer had failed to incorporate lessons from these into the Review or if the farmer did not put the Review into practice, then s/he may well be found to be in breach of the condition. We think this change would focus GAEC 1 more on outcomes rather than processes.

7.49 The crop-residue burning restrictions now form part of GAEC 1 (having previously constituted GAEC 4). This element is covered by existing domestic legislation (the Crop Residue (Burning) Regulations 1993). This is an example of duplication. Unless there are sound reasons for retaining this element of the GAEC, e.g. its role as a deterrent over and above the underlying legislation, we believe that its removal would not risk lessening environmental impacts.

GAEC 11 (control of weeds)

7.50 To comply with GAEC 11, a farmer must take 'all reasonable steps' to prevent the spread of injurious and invasive weeds on his/her land and onto adjoining land. This condition has a low identified breach rate. Given that there is domestic legislation already in place to control the spread of *injurious* weeds (the Weeds Act 1959), there is an argument that GAEC 11 comprises partial duplication. This is not the case for *invasive* weeds (e.g. Japanese knotweed) for which no other legislative framework exists. **Should it be shown that the *injurious* weeds element of this GAEC meets the conditions we identify in paragraph 7.42, we believe it would be a candidate for removal.** This would leave GAEC 11 to relate solely to *invasive* weeds not covered by other legislation. **We recommend that Defra explores alternative ways of combating the spread of invasive weeds.**

⁷⁴[http://rpa.defra.gov.uk/rpa/index.nsf/0/c39ae2bb7b8ab8158025768e005e57cd/\\$FILE/Soil%20Protection%20Review%202010.pdf](http://rpa.defra.gov.uk/rpa/index.nsf/0/c39ae2bb7b8ab8158025768e005e57cd/$FILE/Soil%20Protection%20Review%202010.pdf)

GAEC 12 (land not in agricultural production)

7.51 In the course of evidence gathering, we heard views that the rules covering the management of GAEC 12 (land not in agricultural production) are too restrictive and complicated. However, we understand that, in consultation with the NFU, other farming organisations and environmental experts, Defra recently relaxed the conditions for GAEC 12 so that it now allows much greater flexibility without jeopardising standards. Moreover, we are advised that removal of GAEC 12 would also hinder the objectives of the Campaign for the Farmed Environment (CfE, a voluntary initiative of the type we encourage in paragraphs 2.08 and 2.11) to leave land out of production to create a habitat for wildlife. This is because the land that farmers record as being out of production in their SPS application is part of the target for CfE. If the cross-compliance condition is removed there will be no way of measuring the success of this part of CfE.

7.52 This appears to be an example of the ‘law of inadvertent consequences’. It is possible that the changes recently introduced by Defra will address the problems faced by farmers. We hope that this ensures that GAEC 12 does not continue to deter farmers from leaving land unused on the grounds of environmental benefit. But we suspect it will. If so, this would strengthen the case for removal of the GAEC. **We recommend that Defra and industry closely monitor GAEC 12 to ensure this condition does not continue to have adverse unintended consequences.** An alternative would be to amend the GAEC such that its conditions/restrictions do not apply if the land is not in agricultural production for conservation reasons.

GAEC 18 (water abstraction)

7.53 GAEC 18 (water abstraction) is a relatively new condition. It is also covered by existing domestic legislation (The Water Resources (Abstraction and Impounding) Regulations 2006)⁷⁵. We think this an example of duplication. **We believe that removing GAEC 18 as a cross-compliance condition would not risk lessening environmental impacts.**

Statutory Management Requirements

7.54 Statutory Management Requirements (SMRs) were not widely raised during our evidence gathering phase, with the exception of Nitrate Vulnerable Zones and Livestock Identification (for which see paragraphs 6.13–34 and paragraphs 8.01–28). This may be because respondents are aware that SMRs are set out in EU Directives and as such would require re-negotiation to remove. Alternatively, it could be that industry accepts the validity of the outcomes that the SMRs are trying to achieve. We therefore make recommendations on only two SMRs.

7.55 In paragraph 7.44–52 we outline our views on the conditions under which standards should be changed or removed. We have heard that SMRs 3 (sewage sludge) is acting as a disincentive to the use of this recycled product. SMR 10 (hormones) has a nil breach rate. **We believe there is a case for their removal.** We are confident that this will not result in a reduction in outcomes, because we do not propose removing the need for farmers (and others) to comply with the EU Directives in which they are enshrined.

Paperwork

7.56 A large proportion of the concerns we received about the CAP related to perceptions of unnecessary paperwork, duplicate requests for information and other issues on record-keeping.

⁷⁵ <http://www.legislation.gov.uk/ukxi/2006/641/contents/made>

7.57 Crop code data may well be useful *for other purposes* but are inessential for SPS applications. **We recommend that the current system of crop codes should be disbanded with the exception of energy/protein crops and those essential for ELS agreements.**

7.58 In paragraph 7.22, we recommend that entitlements are removed. If adopted, it may take time to implement this recommendation. In the meantime, **we recommend changes to the paperwork that a farmer is required to fill in regarding the rotation of entitlements.** At present, claimants must submit SP11 forms to tell RPA how they would like their entitlements rotated. Rather than completing the whole form, it would be simpler for the farmer if the form offered an option to sign a declaration that authorises the RPA to rotate the claimant's entitlements to ensure the excess entitlements are not forfeited. This would simplify the process.

7.59 The 'SPS year' runs from 1 January to 31 December (i.e. the calendar year). This makes administrative sense. However, we heard concerns about the SPS application deadline, which currently falls on 15 May. A common complaint was that inspections and deadlines for completing forms often come at busy times of year, particularly spring and summer, e.g. May. Extending the SPS application period so that farmers are able to submit the applications earlier (potentially as early as January, to coincide with the start of the SPS year) would offer several advantages.

7.60 It would allow farmers to submit their application at the time when they were least busy on farm. For example, arable farmers might choose to submit their forms in January/February. To encourage electronic applications the online service should be open from 1 January. **We recommend that the RPA sends SPS application forms and opens the online application facility at the beginning of January. The RPA should communicate clearly to farmers that submitting their application early in the year will not result in an increased risk of inspection.**

7.61 We have been made aware of instances where more than one claim has been made on a single piece of land in a single SPS year. These double claims are almost always made in error, with no intention to defraud taxpayers. But such errors can be difficult to resolve for claimants and RPA alike. This results in delays in paying both farmers. While farm businesses must clearly take responsibility for not making the errors in the first place, we believe RPA's role can also be improved.

7.62 At present, the RPA tells both farmers separately that there has been a double claim on a land parcel. But, for data protection reasons, the RPA does not tell each farmer who the other is. This makes it difficult for the farmers to resolve the situation themselves. **We recommend that the RPA offers the farmer the option of the RPA giving their details to the other. This would enable the farmers concerned to resolve the matter themselves and lessen the burden on the RPA.** The incentive to the farmer is clear: speedy resolution means speedy payment.

Errors and appeals

7.63 Farmers are not allowed to rectify any errors that the RPA has spotted without incurring a penalty. A number of people told us that RPA is now taking a tough line on what are deemed 'obvious errors' (derived from EU legislation). This now results in claimants who have made innocent errors being penalised. In view of our strategic recommendation about the proportionality of penalties (paragraphs 2.25–27), **we recommend that Defra should seek to allow the RPA to adopt a proportionate approach to 'obvious errors' on SPS forms.** First, we propose that the RPA allows claimants to correct obvious errors and also to permit the correction of obviously missing information. Second, in line with Figure 1 (below

paragraph 2.26), where non-compliance is minor we recommend that the sanction should be at most a warning. Where non-compliance is major penalties should be proportionate.

7.64 We received evidence that the appeals process is cumbersome and lengthy. Claimants say that they get bogged down in process. In line with our strategic recommendation in paragraph 2.31, **we recommend that the RPA introduces a system of fixed-date replies throughout the appeals process and clearly sets out its timescale.**

Miscellaneous points

7.65 Species rich permanent pasture is environmentally valuable and needs to be retained. However, not all grass over five years old is environmentally valuable. Under our obligation to retain permanent grassland we need to judge its quality as well as its extent. **We recommend that Defra investigates a better method of assessing whether or not high-quality (as opposed to all) grassland is being eroded.**

7.66 Although the regulations surrounding set-aside were removed in 2008, we received evidence suggesting that Defra should not revert to set-aside. We agree that compulsorily taking land out of agriculture production needs to be avoided. One way to do this is by more farmers and land managers actively embracing voluntary initiatives like the Campaign for the Farmed Environment⁷⁶. (See also paragraphs 7.50–51.)

⁷⁶ <http://www.cfeonline.org.uk/>

Chapter 8 Farmed animals

In terms of livestock movements, identification and reporting, we believe that robust controls are essential to slow down the spread of disease. We need to avoid a repeat of the ‘starburst’ effect and movement ‘blindness’ that caused so much harm early in the 2001 foot-and-mouth disease outbreak. We believe that these controls must be proportionate and risk based and that they must take account of the management needs of livestock producers. Set against these goals, we consider that some of the current arrangements can be simplified, making them easier to understand and improving compliance. We recommend:

- lifting the 6-day standstill on farm to farm movement;
- maintaining the 6-day standstill for animals coming from gatherings (e.g. markets and shows), but providing for approved on farm separation and isolation;
- abolishing Sole Occupancy Agreements and Cattle Tracing Service links and introducing single County-Parish-Holding units (up to 10 miles in radius); and
- adoption of electronic recording of all livestock movements (subject to their not being discriminatory).

Bovine TB is largely outside our remit, so we have referred many suggestions made to us to the TB Eradication Group for England. We do, however, make a couple of specific recommendations. We also make recommendations on the welfare of animals at slaughter and during transport, make proposals relating to fallen stock/on-farm burial, and suggest improvements to the various elements of the veterinary medicines regime.

Livestock movements, identification and reporting

The importance of getting the livestock movements regime right

8.01 As we have made clear throughout this report, we are committed to maintaining standards. We thus believe that protecting our livestock from rapid spread of contagious disease is essential. We believe this can be done while enabling livestock keepers to operate in an open and competitive market. An important part of the solution is for Government to maintain effective border control security in order to reduce the likelihood of exotic disease entering the country. But a substantial part of the solution lies within our borders, on farms and in marketplaces.

8.02 To prevent disease spread it is essential to know where animals are. If we can limit the rate at which susceptible animals move, this restricts the speed with which infection spreads. We believe that these controls must be in place and observed at all times: it is too late to activate them only after disease is found. So we support the principle of a standstill for animal movements. But the current system is over-complicated and over-burdensome. Rules and restrictions must be simple and contribute directly and demonstrably to the agreed outcome. The easier it is to understand and comply with the rules, the better

the prospects of private and public sectors achieving the outcome. Simplification, we argue, will improve take-up; and improved take-up will better protect our livestock from disease.

8.03 We put forward a package of measures to replace the current regime in its entirety. We see our recommendations as the opportunity to remove complexity that has built up over time and make clear and simple connections between holdings, movement and reporting. We also recognise, pragmatically, that the industry must work with current rules. For example, there is no mileage in demanding renegotiation now of EU requirements for sheep electronic identification.

8.04 In line with our strategic recommendation to promote digital solutions (paragraph 2.37), we also encourage increased use of electronic solutions to provide information, while offering assistance for producers who do not have access or skills to use IT tools.

8.05 At the outset of our work, and aware of industry views, Ministers identified the current livestock movements regime as an example of over-complex implementation and enforcement. Ministers asked us to make specific recommendations for an alternative system that married robustness with simplicity.

8.06 In drawing up our recommendations, we have been able to draw on much recent work. In particular, we have found helpful the *Review of the livestock movement controls*⁷⁷, published in 2006, and the *Consultation on the simplification of livestock movement rules and holding identifiers in England*⁷⁸, published four years later. We have drawn on this recent work and considered it in the light of developments since 2006 and current opportunities to drive change. Three proposals were of particular interest to us:

- a robust allocation of CPH numbers, providing a single CPH for all land within a 10-mile radius;
- abolition of Cattle Tracing System (CTS) links and Sole Occupancy Agreements (SOAs); and
- alternatives to whole-farm standstill.

8.07 The present cattle-identification, registration and reporting requirements were developed in response to BSE. The livestock movement controls evolved from measures instigated during the foot-and-mouth disease outbreak in 2001 and changed as a result of subsequent exemptions to permit specific livestock management demands. We believe that the result is an uneasy and over-complex tension between the Government's desire to reduce disease risk and industry's desire to carry out its daily business with minimum restriction.

8.08 We believe that this complexity of requirements and obligations is not well understood. It constrains some traditional business practices and is not fully effective in meeting desired animal disease outcomes. By way of illustration, in 2009, some 1,300 farmers received reduced SPS for breaching the cattle identification and movement element of cross-compliance rules. This is, by a long way, the highest number of breaches of any cross-compliance condition.

8.09 Earlier in this report, we say that we believe that most farmers seek to comply with the law. We think this is true of livestock movements. But we are concerned that there is insufficient industry buy-in to the controls or recognition of the impact of individual behaviour on achieving the desired outcome of restricting disease spread. As a result, controls intended to protect the industry instead risk being perceived by livestock producers as a restriction on management freedom. And this increases the likelihood that the less scrupulous (or frustrated) producer will cut corners or chance non-compliance. We believe that our proposals for simplification will help turn this situation around and benefit industry and outcome alike.

⁷⁷ http://archive.defra.gov.uk/foodfarm/farmanimal/movements/documents/livestock_movement_controls-review.pdf

⁷⁸ <http://archive.defra.gov.uk/corporate/consult/simplify-livestock-move-id/>

8.10 The picture is complicated further by different reporting and recording regimes for each species; largely electronic for cattle and increasingly so for pigs, but still a burdensome ‘paper-chase’ for sheep producers and regulators (albeit we now have compulsory sheep electronic identification!) For movement reporting to deliver full value to industry and to the regulator by providing good quality and timely information, it is essential that the systems are not loaded with barriers to speedy and efficient handling.

8.11 Our evidence gathering made it abundantly clear to us that the sheep and cattle sectors have concerns about current livestock movement arrangements. Representative organisations gave prominence to their views on the issue, and we received comments from a large number of individual producers. In summary, the main issues and proposals raised by livestock producers were:

- For *livestock movements*: retain the 6-day standstill for cattle and sheep but apply it to animals (rather than the whole premises) where there is adequate isolation or separation; permit management practices that require animals to move within the 6-day period (e.g. multi-isolation units to move breeding rams); use farm assurance and/or private veterinarian to assess and monitor isolation and remove requirement for annual official inspection.
- For *sheep identification*: provide a single database for sheep movements; allow tolerances for accuracy in electronic recording; allow batch recording in certain circumstances and arrangements for ‘historic’ flock.
- For *cattle identification*: improve consistency and proportionality of enforcement (e.g. when an animal can be identified despite broken or missing tag); review the information required in cattle passports; and reduce passport size and weight.
- For *recording and paperwork*: concerns about the amount/frequency of reporting required (closely linked to the demands of the movement regime).

Recommendations: a new livestock movements regime

8.12 **In summary terms, we recommend that the standstill operates within a simpler structure that recognises that some movements are inherently more risky than others.** This is consistent with our wider principle of using risk-based approaches. If our recommendations are implemented in full (and they are designed to be a package that replaces current measures), we believe that they will probably result in increased levels of protection from disease (and at least maintained levels of protection), lower burdens for the farming industry; and improved efficiency for regulators. We set out our recommendations as high-level principles, and try to avoid being overly prescriptive. This leaves Defra and industry, in partnership, to fill in the detail.

8.13 Successful implementation of our recommendations for simplification of the standstill regime depends on a series of conditions being resolved, or at least well advanced:

- County-Parish-Holding (CPH) reform must provide clarity and assurance that holding identification is robust and supports removing current provision for Sole Occupancy Agreements (SOAs) and Cattle Tracing Service (CTS)-links;
- arrangements must be in place for rapid and effective recording and reporting of animal movements. A simple system is likely to be more effective; rules that are clearly understood are more likely to be observed and the information provided more accurate;
- livestock producers must recognise their collective obligation to observe requirements when disease is absent and the need for restrictions thus not obvious.

8.14 Improving the quality and timeliness of information is essential for simplifying standstill restrictions and improving evidence available when disease is suspected, whilst recognising that support arrangements will be needed for those producers who are not able to access IT solutions. **We recommend development of rapid and accurate provision of information on animal movements by adopting electronic reporting for all species. Specifically, we recommend:**

- immediate adoption of a single database, commercially and privately operated, to record sheep movements to ultimately replace entirely and make redundant the Animal Movement Licensing System (AMLS);
- early adoption of automatic pig movement recording;
- an end to paper-based reporting of cattle movements;
- consideration in the longer term to developing a single private-sector database for all species;
- electronic data entry and recording should be immediate;
- where alternate reporting systems are provided, movements must be reported within 72 hours;
- maximum use of the Central Point Recording Centre (CPRC);
- industry should take the opportunity to offer support to non-IT enabled producers, through livestock markets or 'call-centre' arrangements to collect and record information; and
- the paper trail currently associated with AMLS should be abandoned as soon as replacement arrangements are robust.

8.15 We were struck that up to 85% of sheep movements are within farm premises that might be included within a single, distance-linked CPH. So linking these premises would remove the current burden on producers and officials of reporting many movements, but without adversely affecting the purpose of these controls. This would remove the chance of confusion resulting in movements not being reported. **We recommend that the complex rules for linking premises should be simplified to introduce the same arrangements for cattle, sheep and pigs. Specifically, we propose that:**

- producers should be able to link premises within a single CPH within a radius of 10 miles of the centre of the 'home' premises;
- each CPH should be managed under the same herd/flock register; and
- SOAs and CTS-links and any other links/distance rules should be removed.

8.16 **We recommend that movement-reporting requirements should be the same for cattle, sheep and pigs. Specifically, we propose that:**

- movement within a single CPH should neither be recorded in the herd book/flock register nor reported;
- movement to any other CPH, whether or not with a change of owner/keeper, must be reported; and
- movement to market or to slaughter must be recorded and reported.

8.17 Movement of animals between farms is relatively less risky in terms of disease spread than movement of animals that have mixed with other stock at a market or other gathering. Such farm-to-farm transactions appear to be far commoner than previously thought. These lower risk movements are caught by the current standstill requirement. We think that allowing movement of animals between farms without triggering a standstill will make it easier to trade low disease risk animals, without adversely affecting outcomes. **We recommend that the standstill rules should continue to apply to all susceptible animals on a CPH other than to:**

- movement within a single CPH;
- movement between farms (or commons), whether or not there is a change of owner/keeper and where those farms are not engaged in animal gathering;
- movement direct to slaughter or via a slaughter market; or
- where animals are held in an approved separation or isolation facilities (para 8.18); but
- in all cases, movement restrictions for specific disease regimes (e.g. bovine TB) must take precedence.

8.18 We believe that the proposed arrangements for farm-to-farm movement should allow the movement of much breeding stock and simplify the current seasonal arrangements for moving breeding stock. Moreover, we believe that the changes we recommend for linked holdings should reduce the need for movement within a standstill period. We thought hard about what might constitute effective separation

or isolation arrangements. We consider that a livestock keeper should be eligible for approved and monitored separation in place of standstill within a single CPH only if they have separate parcels of land that are managed as discrete units. Isolation should be an exceptional option for breeding or show animals. **We recommend that approved separation or isolation facilities should provide for animals to move from premises under standstill where it is essential for management reasons. Specifically, we propose that:**

- approved separation requires animals to be held on land managed separately from other animals on that holding or on contiguous holdings (e.g. on distinct parcel of land within a CPH, with separate handling, feed and water management, and appropriate distance separation from other animals);
- approved isolation in a building within a farm premises requires a dedicated facility with separate arrangements for handling stock and discharges, effluent etc that ensure they do not come into contact with other livestock;
- approval for an isolation facility would be dependent on the applicant operating electronic reporting; and
- separation or isolation arrangements should be approved by the Animal Health and Veterinary Laboratory Agency (AHVLA) on the basis of producer 'self-declaration' supported by information provided by a private veterinarian and monitored by a private veterinarian and/or annual farm assurance audit; AHVLA should monitor operation in the course of other visits.

8.19 We recommend that animal identification regulations should be risk-based and proportionate to the objective of ensuring clear traceability. We propose that they be designed in a way that facilitates rather than impedes compliance (e.g. without imposing burdens that are seen as restrictive). Specifically, we propose that:

- the Government must continue to seek European Commission agreement to arrangements for batch recording and transitional arrangements for the 'historic' flock; and
- in the longer term, the Government should seek to negotiate EU sheep electronic identification (EID) rules that take greater account of the way the country's flock is managed.

8.20 We recommend that livestock recording arrangements should also work with best management practices and not duplicate information. Specifically, where it is not already in hand, we propose that:

- the content, size and weight of cattle passports should be reviewed with a view to replacing documentation with electronic reporting;
- in the meantime, maximum use should be made of reporting systems that do not require the submission of the passport or tear-off strips; and
- provision should be considered for herd books and flock registers to be kept electronically, and for such electronic records to remove the need for paper copies. This also provides a chance to simplify and minimise the data needs of the register.

8.21 We recommend that enforcement must be consistent. In line with our strategic recommendation on the proportionality of penalties (paragraphs 2.26–2.27), we believe that poor practice and regular/wilful poor performance must be identified and dealt with effectively – but that the normally compliant producer is not penalised disproportionately. Specifically, we propose that:

- it must be a high priority to agree with the EU appropriate tolerance levels to address errors in data reading when using electronic tag readers;
- there should be clearly defined and communicated flexibility in the enforcement of cattle tag rules. For example, we suggest that if an animal that has left a holding has lost one of its two tags but can still be readily identified, the loss of a tag should not trigger rejection or further enforcement action, provided that the animal can be clearly identified throughout the remainder of its journey and the incident is not evidence of a wider failure on the part of the keeper;
- in line with our strategic recommendation that there should be a presumption of data-sharing between regulators (paragraph 2.35), official agencies must share information within their

organisations and with other agencies, to ensure best use is made of data to identify risk and to co-ordinate and monitor inspection and tests.

8.22 Finally, in line with the Coalition Government’s principle of ‘Government doing only what only Government can do’ and our proposed approach of earned recognition (paragraphs 3.12–30), we believe that Government and industry in partnership should generate greater opportunities for trust and adoption of private-sector arrangements in making risk assessment.

8.23 Our proposed package represents a major change from the current situation. We have given considerable thought to the risks involved in making such a change. We set out below what we consider to be the key risks to outcomes and industry acceptability, and offer some suggestions as to how to reduce these risks.

8.24 We have considered the concerns of the pig sector, in particular, that changes in the standstill rules might increase the chance of disease spread. We believe that allowing flexibility, within a simple overarching principle that addresses the most risky movements, should increase livestock keepers’ understanding of and compliance with the arrangements. In turn, we believe that this will reduce risks not increase them.

8.25 There is a risk that permitting farm-to-farm movements and on-farm separation might encourage livestock keepers to trade from farms in an unstructured way that damages the viability of livestock markets and increases the risk of disease spread. We have recommended that changes are underpinned by a widespread adoption of immediate electronic reporting and simplification of holding identification (CPH). This should allow enforcement bodies to monitor information, hopefully in real time, and to identify patterns of movement that suggest increased risk. This will give enforcement bodies the information they need to take appropriate action. We believe that livestock markets should see the new regime as an opportunity for them to provide added-value services to their clients by providing electronic recording and reporting facilities. The most successful livestock markets will be those that engage with our proposed arrangements.

8.26 It is possible that the benefits to the majority of livestock keepers will be put at risk by the actions of a few. This may be through misunderstanding or lack of awareness of the impact of their actions on their neighbours and others. We were struck by the misunderstanding and lack of awareness illustrated in the following two comments:

- the effectiveness of separating stock was questioned, as a producer might separate animals from his own stock but put them directly next to his neighbour’s stock;
- it was suggested that the requirement to cleanse private trailers used from farm to abattoir and return should be scrapped as bio-security controls are more appropriate for commercial hauliers.

8.27 Against this background, we consider there is an opportunity for the livestock industry to take responsibility. **We recommend that livestock producers, whether as individuals or through their representative organisations, must take responsibility for improving training and understanding the importance of bio-security and movement controls at times when there is not a disease outbreak.**

8.28 We are also aware that some livestock keepers may feel more burdened by the proposed changes rather than less. A notable example is cattle producers using CTS-links, who are not currently required to record movements. However, we believe that the current arrangements for reporting cattle movement are not onerous. Moreover, removing this exemption has a complementary impact on TB controls as it ensures that all cattle movements are reported and matched with the pre-movement inspection-testing requirements necessary to maintain bovine TB controls. We do not think that it is acceptable for producers to be able to move cattle over long distances without appropriate testing.

Bovine TB

8.29 During our evidence gathering period, we received a lot of comments on TB related issues. We know that this is an issue of major concern to the livestock industry. However, we were mindful of the need for the Task Force to add value rather than duplicate existing processes. TB is a case in point. Defra was already working closely with the industry, veterinary profession and other groups to identify a way forward. As a report on those discussions is expected later this year, we felt there was little benefit in the Task Force attempting to parallel these considerations.

8.30 We took the opportunity to discuss our work with the Bovine TB Eradication Group for England (TBEG) and identify who was best placed to address the various concerns raised with us. We agreed that TBEG would address those issues that they were already considering or planned to do so in the near future, namely: issues related to bovine TB regulations (e.g. testing, movement, quarantine and exemptions, licensing including ability to make electronic application); implementation and enforcement; animal-tracing procedures; risk-based routine testing regimes, in particular for slaughter animals; operation of 'red' and 'green' livestock markets; and compensation.

8.31 We have considered other matters that are not on TBEG's agenda. These relate to ways of improving process and thus fall within our remit. We make two recommendations below.

8.32 It was suggested to us that there should be a system to ensure that the test history and status of cattle is available at point of sale or transfer. We agree that buyers and sellers could better share information on TB status and test history of cattle. We feel that such an improved understanding of the TB risks in a herd could lead to less risky trade and would allow farmers to take greater ownership of risks. This approach would strengthen a farmer's responsibility for outcomes with minimal extra burden. This might be achieved in different ways, e.g. providing a sticker on the cattle passport (as trialled in Wales). The system should be cost effective for farmers and government and should take account of increased use of electronic reporting. **We recommend that TBEG, in the near future, should consider options for a system of communicating the test history and status of cattle with the aim of developing a joint industry/government solution.**

8.33 Species other than cattle are susceptible to TB and control measures should be adopted to take account of that risk. In line with our principle of defining the desired outcome and designing non-regulatory solutions **we recommend to TBEG that owners of non-bovine susceptible species (e.g. sheep, goats, pigs and camelids) should be part of the national TB eradication programme. To reflect the relatively lower risk presented by these animals, we recommend that a proportionate, risk-based approach should be developed.**

Animal welfare

8.34 Considering the public interest it attracts, we received surprisingly few comments about the specific requirements of animal welfare regulation. We believe that this reflects farmers' commitment to high animal welfare.

8.35 However, we would be remiss if we did not consider the concerns expressed to us that animal welfare rules "have become a business" and that several regulatory frameworks include an element of 'gold plating' of EU legislation. The argument put to us is that Government has introduced higher standards to satisfy public demands (including from consumers), and that the standards go beyond the minimum

protection or welfare levels justified by scientific evidence. We were struck by two examples, in particular, which illustrate specific issues with the implementation of EU legislation.

8.36 In autumn 2010, Defra Ministers elected not to implement a derogation in the Welfare of Farmed Animals (England)(Amendment) Regulations 2010 allowing a higher stocking density (42 kg/m²) for conventionally reared meat chickens if producers complied with very specific management rules. We appreciate that Ministers faced a difficult decision that required them to balance scientific evidence, expert advice and current industry management practice. But we note that, in line with the Government's own *Guiding principles for EU legislation*, not taking advantage of the derogation represented a clear and intentional decision to gold plate EU legislation.

8.37 The Government's *Guiding principles for EU legislation* commit the Government to "endeavour to ensure that UK businesses are not put at a competitive disadvantage". In this light, we welcome Defra Ministers' decision to start the post-implementation review process to enable the impact of the new legislation to be considered in 2013.

8.38 Second, the poultry industry has expressed concern to us that there will not be full compliance across the single market when the EU ban on conventional cages for laying hens comes into force on 1 January 2012⁷⁹. This will mean that producers who have made or will make investments to comply with the new rules on time (such as those in England) will be at a competitive disadvantage relative to producers who do not comply before the deadline. We thus welcome Defra Ministers' engagement with the European Commission to ensure that there is no delay to the 2012 deadline for non-compliant producers in other member states and to investigate mechanisms to protect compliant producers in this country.

Welfare of animals at slaughter

8.39 We believe it essential for animal welfare outcomes that anyone who kills animals regularly in the course of their business should be competent to do so and should hold a slaughterman's licence for those activities where one is required. However, we believe that the process of obtaining a licence should not be over-burdensome for those who do not work in slaughterhouses, who must attend a slaughterhouse or who arrange to kill an animal in the presence of a veterinary surgeon. **We recommend that an authorised veterinary surgeon should be able to take account of supplementary evidence available about an applicant's competence and skills from another veterinarian. We recommend that this change should be implemented in advance of the new welfare-at-slaughter rules that come into effect on 1 January 2013.**

8.40 At present, domestic regulations do not allow the use of carbon dioxide (other than as part of approved gas mixtures) to kill chickens for food production, as is permitted in some other European countries. This is a clear restriction on efficient business practice for English poultry businesses. However, EU legislation will come into force across the EU in 2013 that will make it legal to use carbon dioxide for poultry slaughter. This option could save business considerable sums of money and we see no benefit in waiting until 2013 to implement it. **We recommend that Ministers consider changing the law now to enable the use of carbon dioxide for poultry slaughter rather than wait until 2013: the savings involved would appear to represent a 'compelling reason' for early transposition (see paragraph 2.49).**

Welfare of animals during transport

8.41 During our evidence gathering, we heard concerns about inconsistent interpretation and enforcement of welfare rules, in particular by official veterinarians at abattoirs. We learnt that this can be a

⁷⁹ required by Council Directive 1999/74/EC on minimum standards for laying hens

major worry when making decisions on the fitness of animals for transport. We realise that this is often a subjective decision. So clear guidance would help. **We recommend that industry, in consultation with Government, bring together existing guidance on fitness for transport so that there is a common reference for producer, haulier and regulator.**

8.42 We received some comments about the process and paperwork for animal transport. **To improve information about the handling process, we recommend that, if requested by the exporter, the issuing agency informs them of the date on which the documentation will be sent to the veterinary officer for completion.**

Fallen stock/disposal/on-farm burial

8.43 During evidence gathering we received comments on the current arrangements for collection of fallen stock and permitted disposal methods. Industry representatives were concerned that arrangements (i) do not reflect good bio-security protocols, as fallen stock operators must make regular visits from farm to farm, and are (ii) disproportionate to risk. In particular it was suggested that changes could be made to:

- allow bio-reduction or composting;
- build more flexibility into the inspection regime to allow for private vets to undertake incinerator checks;
- review the burial ban given evidence of declining BSE incidence and the low risk of TSE in sheep and humans; and
- allow on-farm containment of stock prior to disposal (bio-reduction).

8.44 In the light of industry concerns, **we recommend:**

- **the continued development and adoption of methods of containing stock prior to disposal and bio-reduction, and**
- **continuing to seek a derogation for burial of small farm animals.** We do not, however, endorse composting of small farm animals as we believe that there is too great a risk of animal material being transported by wild birds or animals and putting other stock at risk.

Animal health and veterinary medicines

Veterinary medicines regulations

8.45 We received comments that the annual review of the veterinary medicines regulations has created unnecessary confusion and uncertainty. These regulations apply widely; not all measures are directly relevant to farmers. The consolidation of veterinary medicines rules in 2005 was a major achievement in simplifying the law. We endorse the Veterinary Medicines Directorate's (VMD) policy of reviewing and making annual updates when appropriate. To address farmer concerns, we recommend that VMD and industry consider if there are additional ways of advising farmers of changes to the regulations.

Availability of veterinary medicines

8.46 We heard industry concerns regarding the availability of veterinary medicines. We heard views that the regulatory approval process operated by the VMD constrains livestock farmer competitiveness by restricting the availability and choice of treatments. However, we understand that the VMD has taken specific measures to address concerns about availability of medicines for some animal species and conditions. We understand that the VMD operates schemes that allow veterinary surgeons to import products from outside the UK to address short-term problems. In the medium and long term, the VMD has

created procedures to facilitate the authorisation of medicines to fill therapeutic gaps. The provisional marketing authorisations and limited marketing authorisations require submission of fewer data initially and therefore allow products to be placed on the market at less cost than a full approval. Notwithstanding this, **we recommend that the regulator should continue to seek every opportunity in EU discussion to increase the availability of treatments by adopting regulatory approval processes to allow products to be approved for use across the EU.**

Farm veterinary medicines records

8.47 We received comments that completion of farm veterinary medicines records was onerous for farmers and veterinarians alike. First, we heard that better use should be made of supporting information. For example, if the invoice or a photocopy was included in the record, there should be no need to duplicate information in the record. Second, and most pertinently, we heard that these records were an unfortunate example of the “culture of tick-box regulation” that the Coalition Government has pledged to end (paragraph 2.02). The regulator checks whether the records have been correctly completed – but this provides no indication of whether the objective (providing traceability of use when investigating excessive residues in food) has been met.

8.48 This clear and counterproductive focus on process rather than outcome must stop. **We recommend that the VMD should take steps to simplify record-keeping demands where the regulation allows. We also recommend that the VMD pursues its policy of asking the European Commission to consider the extent of the records to be kept and to retain only those necessary for consumer safety and, on a proportionate basis, for animal safety.**

Chapter 9 Growing and crops

To safeguard the future of the EU Fruit and Vegetables Scheme, we recommend that:

- Defra, the Rural Payments Agency (RPA) and the horticulture industry must work together to disseminate new guidance that provides clarity on eligibility of Producer Organisations and measures which are permitted within operational programmes;
- the RPA should act swiftly to carry out a review of compliance, using this guidance, so that only those Producer Organisations which meet the scheme's conditions are eligible for payment;
- the review must bring about a significant improvement in the relationship between Government and the horticulture industry, with increased mutual trust and responsibility; and
- in the long term, the UK should work with other Member States to press for improved consistency of interpretation of the scheme rules at the EU level.

Pesticides must be regulated in order to protect human health and the environment, but the continued availability of an adequate range of effective pesticides is critical to sustainable food production. We recommend that:

- Defra should continue to lobby in the EU for a regulatory system governing pesticides that is based on risk not hazard; and
- in the short term, Defra facilitates adequate availability of pesticides (including for minor crops).

The Home Office should act immediately to amend the Misuse of Drugs Act so that hemp with low Tetrahydrocannabinol content, grown for industrial reasons, is not subject to a dual licensing regime.

Introduction

9.01 In this chapter, we address issues across the arable farming and horticulture sectors. These sectors play an important role in contributing to sustainable food production. Cereals are the main arable crop and are grown on around 2.5 million hectares in England on nearly 40,000 farms. Horticulture crops are grown on nearly 150,000 hectares on 10,000 holdings⁸⁰.

9.02 During our evidence gathering, we found that many issues of concern to arable and horticulture operators were not sector-specific (e.g. labour supply, gangmasters licensing, private-sector assurance, government inspections, and water availability and infrastructure). We address these in chapters 3, 4 and 6.

9.03 Our work on growing and crops was made considerably easier by the review of the Fruit and Vegetable Task Force (FAVTF), which published its recommendations on regulatory and non-regulatory issues in August 2010 and its Action Plan in October 2010⁸¹. The FAVTF has made recommendations on many of the issues of concern to the horticulture and arable industries. In this chapter, we comment on

⁸⁰ <http://archive.defra.gov.uk/evidence/statistics/foodfarm/landuselivestock/junesurvey/documents/Jun2010-Eng.pdf>

⁸¹ <http://archive.defra.gov.uk/foodfarm/food/policy/partnership/fvtf/documents/100826-fvtf-report.pdf>

(only) a couple of issues raised by the FAVTF: the EU fruit and vegetables regime and pesticides. Otherwise, **we endorse the Fruit and Vegetable Task Force’s regulatory recommendations and are pleased that Defra Ministers have accepted them.**

EU fruit and vegetables producer organisation scheme

Problems with the scheme

9.04 The EU Fruit and Vegetables Producer Organisation scheme (‘the scheme’) is part of the Common Agricultural Policy (CAP)⁸². The scheme aims to support groups of growers to establish and run Producer Organisations (‘POs’). The main purpose of POs is to boost competitiveness by enabling growers to realise efficiencies of scale and exert greater influence in the market place. To put the scheme in perspective, the UK meets only 12% of its demand for fresh fruit and 60% for vegetables⁸³. In the context of food security, we believe that this scheme is vital to help increase production and competitiveness.

9.05 In the light of audit visits during 2005–09, the European Commission auditors and Court of Auditors have not been satisfied that the UK, as well as some other Member States, is applying the scheme in a way fully consistent with legal requirements. This has led to de-recognition of some POs and significant financial ‘disallowance’ for the Government. The scale of the problem is considerable, for industry and Government alike. Over the last few years POs in the UK received c. £28m of EU funds per year, but Defra has had to pay back to the European Commission disallowance totalling £22m in 2006 and, subject to ongoing European Commission investigations, may incur additional disallowance for the period 2006–08.

9.06 The combination of de-recognition and suspension of certain in-year payments has caused significant uncertainty in the horticulture industry. We heard that many POs believe that the scheme is not being administered properly. They feel that the Government is inconsistent in its interpretation of the rules. POs are confused as to whether or not they meet scheme requirements and are unclear what they can include in their operational programme.

9.07 Some consultees felt strongly that certain POs were set up to gain EU funds rather than to meet the scheme’s objectives. They felt that action needs to be taken to eliminate these “artificial” POs from the scheme because their recognition discredits legitimate POs. Some consultees considered it inexplicable that two separate RPA audits are sometimes needed. Others expressed concern at both the level of experience of RPA inspectors (an issue we address generically in paragraphs 3.10–11), and the amount of time required for the audits.

Making the scheme work

9.08 In the light of industry concerns, the FAVTF made recommendations on the scheme. We have taken these into account when framing our own proposals.

9.09 It is clear to us that the scheme is not working very effectively and is failing to achieve its desired outcome. Industry has lost confidence in the scheme and participation is waning. Disallowance and financial penalty are already real. But we are also clear that a functional scheme would be important to the fruit and vegetable industry. It could bring about change in the supply chain. It could help businesses

⁸² Scheme rules are set out in: Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets, specific provisions for certain agricultural products in the Single CMO Regulation, and Commission Regulation (EC) No 1580/2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector.

⁸³ Defra and National Statistics (2010) Basic Horticulture Statistics 2010.

improve production techniques, increase efficiency and remain competitive, all within the context of environmental sustainability. Moreover, the scheme is set in the context of an appetite within some EU Member States to widen the application of the Producer Organisation model to other sectors, as part of the CAP 2014–20. In the interests of both Defra and the horticulture industry and within this wider context, **we believe it essential for Defra and RPA (in consultation with industry) to review the current EU Fruit and Vegetables Producer Organisation scheme and make prompt changes to get this model right. Growers must also ensure that they comply with the scheme rules and co-operate with Government so that the review is effectively and speedily executed.**

9.10 We are pleased to note that Defra and the RPA have now taken such work forward, in partnership with industry. Our specific recommendations (paragraphs 9.11–17) both support and communicate the work that is underway on revised scheme guidance. We also offer thoughts on longer term action that should restore confidence in the scheme (paragraph 9.18).

Short-term recommendations (domestic level)

9.11 There is a need to provide clarity around the very basics of the scheme: core eligibility and measures that are permitted within operational programmes. We therefore welcome collaboration between Defra, the RPA, the NFU and other industry representatives to produce a new guidance document that contains a shared understanding and responds to the concerns of EU auditors⁸⁴.

9.12 We were also keen that these new guidelines were clearly communicated to all POs. We are again pleased that Defra circulated the draft guidance to all POs and invited comments before meeting with all stakeholders on 3 March 2011. A final version was issued on 14 March 2011. We welcome this collaborative approach. **We recommend that POs use this guidance to consider whether they need to amend their operational and organisational structure to meet the scheme requirements.**

9.13 We endorse the swift review of POs instigated by the RPA in March 2011⁸⁵. For the review to be effective, **we recommend that POs themselves provide RPA with a much clearer picture of their operational practices and the evidence of how they meet the scheme requirements.**

9.14 **We recommend that members of those POs that do not comply with the scheme requirements should be encouraged to join existing compliant POs, and consideration should be given as to how Defra could facilitate this.** Increased consolidation and cohesion of the supply chain and the resulting efficiencies is, after all, the purpose of the scheme. This will also help those growers to benefit from the scheme, despite past problems with recognition.

9.15 Through the review, and looking ahead, it is crucial for scheme credibility and business confidence that the RPA implementation of the scheme rules is consistent. In the light of our wider recommendation for strengthening Government's understanding of the agriculture industry (paragraph 2.20), **we recommend that RPA staff responsible for scheme administration should have the opportunity to gain an understanding of the fruit and vegetable industry and how PO businesses operate in it. This is something with which POs should assist.**

9.16 The new guidelines should usher in a fresh start for industry and Government. From now on, transparency, clear communication and collaboration are key. **Where problems arise, we recommend that**

⁸⁴ A working group including nine PO representatives was set up in November 2010. It has worked to drive greater clarity of rule-making and guidance. It has focussed on the areas of concern expressed by EU auditors.

⁸⁵ This review of PO compliance with recognition requirements under the scheme is due to finish by June 2011.

Defra, the RPA and POs work together immediately to solve them before they cause difficulties for the scheme.

9.17 Central to scheme effectiveness is the quality, efficiency and consistency of the audit and inspection processes. **We recommend that Government and industry should work together to improve communication with POs about the reasons for the separate audit processes, and the auditing of the inspections themselves. Government should seek to improve the efficiency of the audit process while remaining consistent with EU requirements.**

Longer-term recommendations (EU level)

9.18 We understand that the UK is not the only Member State that has faced significant issues in terms of scheme administration as a result of adverse EU audit findings. In line with our strategic recommendation that the European Commission takes better responsibility for helping end-users comply with EU legislation (paragraph 2.52), **we recommend that:**

- **the European Commission and auditors pursue consistent interpretation of the scheme's regulations across the 27 Member States;**
- **the European Commission works with industry and Member States to draft guidance on interpreting scheme legislation;**
- **the European Commission considers developing a 'compliance promotion initiative' along the lines developed by the Directorate-General for the Environment on other regulatory frameworks; and**
- **Defra continues its dialogue with Member States who have faced similar problems, in order to draw together an approach that encourages clarity and consistency of application of the scheme rules.**

Pesticides

9.19 Pesticides are critical to a competitive, modern agricultural industry. The approval and use of pesticides is regulated in order to protect human health and the environment. Pesticides approvals are regulated under EU Council Directive 91/414⁸⁶ concerning the placing of plant protection products on the market, although some products currently remain subject to national rules⁸⁷ pending their transition to the EU regime. In terms of the requirements for pesticide users, there is no apparent difference between products approved under the two systems.

9.20 However, this current system is being further changed by the introduction of a new EU Regulation from June 2011. This new Regulation continues to harmonise plant protection products across the EU, but it also introduces some new requirements and brings in a new 'zonal' approach to approvals⁸⁸.

9.21 These regimes control which pesticides are available for farmers on the market. They also require the UK to assess the risks posed by pesticides in use and to set conditions (such as restrictions on how much pesticide can be applied and how often) that ensure that approved use does not endanger people or the environment. Domestic guidance on how pesticide users can meet their responsibilities is in the statutory Code of Practice for Using Plant Protection Products⁸⁹. Enforcement to ensure the safe use of pesticides is largely carried out by the Chemicals Regulation Directorate (CRD) of the Health and Safety Executive.

⁸⁶ implemented in England by the Plant Protection Products Regulations 2005.

⁸⁷ Control of Pesticides Regulations 1986

⁸⁸ Regulation (EC) 1107/2009 concerning the placing of plant protection products on the market.

⁸⁹ http://www.pesticides.gov.uk/safe_use.asp?id=64

9.22 The UK has long sought to encourage pesticide users to go beyond these regulatory requirements and to encourage best practice in the use of pesticides. A key way of doing this has been the industry's Voluntary Initiative. Its schemes include testing pesticide application equipment and providing the continual professional development of pesticide users. We applaud this initiative as a good example of the industry driving best practice.

9.23 The EU Sustainable Use Directive must be implemented by November 2011. This is the first substantive piece of EU legislation that controls the use phase of pesticides. The Directive will mandate standards in all EU Member States that are already in place in some Member States (including the UK, through statutory and voluntary controls). This should be to the UK's competitive advantage. Following consultation the Government has decided that implementation of the Directive will mean making only very few changes to current arrangements and will not involve gold plating.

Dealing with change

9.24 Many of the specific concerns around the pesticides regime highlighted below are due to the pesticides regulations being in a state of flux. Comments to the Task Force focussed on the current system of legislation under the Directive, which will become obsolete once Regulation EU 1107/2009 comes into force in June 2011 (paragraph 9.20). This makes it hard to take a strategic view. We therefore focus on the future regime in our comments and recommendations.

9.25 **It is essential for the Government, pesticides manufacturers and distributors, and farming industry associations to clearly communicate these legislative changes to pesticide users. In line with our strategic recommendation on post-implementation review (paragraph 2.49) and the Government's commitment to sunseting (paragraph 2.09), we recommend a review of the new legislative framework after it has bedded in.** This review should be completed in time for Defra and industry to influence the European Commission's own review, which must be completed by end 2014.

9.26 In general, **we are concerned that the EU pesticides legislation is moving towards a hazard-based approach to regulation rather than one based on risk.** The active ingredient is assessed as hazardous or not based on possible harm, without reference to dose or exposure and without consideration of benefits and costs. The current system bases the regulations on risk, assessing the chemical, and setting limits on exposure, dose etc. **We believe that this change is fundamentally contrary to good practice and the principles of better regulation. We are aware that the UK Government has repeatedly expressed this view and we reinforce its message.**

Approvals

9.27 A common thread during our evidence gathering was concern about the differences in availability and access to pesticides across the EU. Some consultees felt that Defra was interpreting EU legislation in a way that inhibited use and thus disadvantaged domestic users.

9.28 Consultees thought the domestic approvals process was too slow, and was exacerbated by setting of Maximum Residue Levels at the EU level. The difficulties in getting and retaining approvals were felt particularly acutely by the horticulture industry, especially for minor uses. Consultees lamented that Defra currently provides no financial support for minor-use approvals (unlike in some other individual Member States).

9.29 On Specific Off-Label Approvals (SOLAs), consultees also mentioned the cost implications, particularly of re-registration (see box below). When a product is re-registered (as is currently required

every 10 years), SOLAs must be re-registered. Unlike some other Member States, a re-registration fee is payable.

“There is a severe impact of SOLA re-registration costs upon the Horticultural Development Company budget. When an active achieves Annex I listing, all products containing that active must be re-registered in each member state, but Member States other than the UK waive fees for minor uses. There are 8 SOLAs for the use of ‘Defy’ to be re-registered and each SOLA will be charged at a rate of several thousand pounds. Another example is for the use of Gamit 36 CS: this is extremely concerning! Fourteen appear to be SOLAs, so the cost will be in the region of £21,000. This all detracts from the funds available for research and development and is a cost not borne by growers in other parts of the EU.”

Vivien Powell, Horticultural Development Company

9.30 We acknowledge the frustrations felt by industry but note that some of the approvals process is market driven (i.e. the submission of applications is essentially a commercial decision). However, we feel it useful to comment on particular issues relating to the process.

9.31 **We support the move to a zonal approach to approvals that will take effect in June 2011 as a result of the new EU Regulation 1107/2009. We recommend that the UK should press for the development of this approach so that, ultimately, approvals (including for minor uses) in other Member States should immediately be available for use in the UK, and vice versa.** We are encouraged that the UK will be in the largest zone and that Member States are already working on work-sharing within zones. We hope that Defra will facilitate the changeover in such a way that the benefits to growers of the new approvals system will be realised quickly, to end delays in marketing new products in the UK.

9.32 We are clear that gaining approvals for minor uses and SOLAs is a particular issue for the horticulture industry. Growers face particular challenges as a result of climate change, which enables new pests to emerge. It is important that pesticide authorisations for minor uses and SOLAs are in place to allow growers to adapt quickly and use new products that tackle these pests. The cost of the authorisations and the data requirements are key factors.

9.33 We are pleased that the European Commission has initiated a study on the status of the minor uses and the possible establishment of a European fund for minor-use approvals. **We recommend that the Government should support the introduction of such an EU fund for minor use approvals.** We also welcome work by the CRD to secure a number of improvements to help minor uses in EU Regulation 1107/2009. We hope that, as well as the arrangements for zonal authorisations, extended data protection for companies that hold authorisations for minor uses will help ‘level the playing field’ and encourage companies to submit applications. **On SOLAs, we recommend that re-registration in groups is allowed, and incur a single fee.** We acknowledge that this requires additional Government funding, but we find it frustrating that significant amounts of the Horticultural Development Company budget is spent on re-registrations. We hope that this will enable the company to target funding at new research and development to support the sector.

9.34 Industry perception is that the approvals process is relatively slow in the UK, in particular for horticultural products. In 2010, an independent study found the average product authorisation process to be quicker in the UK than all other Member States⁹⁰. But **we believe there remains room for significant improvement in the speed of the approvals process.** At EU level, we are concerned that it can take up to two years to set a Maximum Residue Level (MRL), rather than the one year that is feasible. We share the industry’s view that this is a barrier to approvals. We are therefore pleased that the European Commission

⁹⁰ http://www.agri.ee/public/juurkataloog/TAIMETERVIS/taimekaitse/Acrobat_Document.pdf

is preparing supplementary guidance to ensure that this one-year timetable is met. Collectively, long approvals processes can be a disincentive to entrepreneurial development of innovative pest and disease control products (see box).

“I am frustrated that novel biological controls may not be available to growers in the UK. An insect sex pheromone which could control a certain specific pest can be used without registration for monitoring traps. But if it is used for mating disruption/mass trapping/attract and kill of the pest, then it must go through the pesticide registration process even though it is not applied to the crop! This is how I understand CRD are currently interpreting the EU rules. Applying for experimental permits for pheromones is also subject to an overregulated process. I hope the Task Force can really make a difference here so British growers can easily use some of the new innovative products from UK horticultural research.”

Richard Harnden, Berry Gardens Growers

9.35 On this very specific issue, **we recommend that CRD should actively work for simple interpretation of regulation on bio-pesticides. In particular, we recommend that regulation of the plant protection uses of pest-specific semio-chemicals, including the above uses, should be simplified to expedite their development, commercialisation and adoption.**

Withdrawals

9.36 Consultees also felt that the current process for product withdrawal disadvantages farmers and jeopardises environmental outcomes. At present, approval for an old product can be withdrawn when a manufacturer changes brand name or the formulation and obtains approval for the ‘new’ product. Even if the active ingredient remains the same, the old product is no longer approved and may no longer be legally used (even though the active ingredient and/or formulation or recipe, remain safe to use). Growers are not always aware that a change has taken place and they may find that they have a stockpile of pesticide to use within a rapidly decreasing window. To avoid disposing of the product, growers sometimes feel obliged to use up products in ways that are contrary to good practice.

9.37 We find it nonsensical that growers are forced to dispose of a product where there is no change in active ingredient. We propose a new approach to product withdrawal that should maintain environmental outcomes and reduce burdens to farmers. **Where the active ingredient itself remains safe to use (and thus there is no risk to health or environment), we recommend that growers be allowed a significant grace period to use up their stock of pesticides following withdrawal.** We recognise that this will require negotiation within the EU.

9.38 In the short term **we recommend that more could be done nationally to communicate the cut-off dates throughout the industry so that growers are clearer on the deadline for using up approved products.** We are aware that the CRD website has a public database on the status of products and active substances. We encourage the use of other tools that help communicate information about withdrawal of products to the industry. One example is linking the database to certain farm management software, which checks spray tickets before they can be issued against the approved list. Another is a monthly electronic newsletter which at present has restricted circulation⁹¹. Recalling our principle of Government–industry

⁹¹ The e-newsletter only goes out to a small number of Catchment Sensitive Farming priority pesticide catchments (in East Anglia, Yorkshire and the West Midlands) and is paid for under a partnership between the Catchment Sensitive Farming initiative and the Voluntary Initiative.

partnership (paragraph 2.10–11), **we recommend that trade associations, suppliers and other representative bodies take responsibility for cascading this pesticides newsletter more widely.**

Pesticides use and harmonisation of worker exposure

9.39 Consultees were concerned about pesticide use. They felt that worker exposure rules were not implemented consistently across the EU. One grower asked why the UK is implementing 8-day intervals on chemicals such as Daminozide when the EU has 12 hours (or fewer), commenting that this is severely disadvantageous to the UK ornamental growers sector.

9.40 We recognise the importance of protecting workers from exposure to pesticides through a risk-based approach, based on sound scientific and health-and-safety analyses. But we believe that there are benefits in increased harmonisation of the approach to worker exposure across the EU. **We recommend that the CRD supports the development of new guidance by the European Food Safety Authority which aims to harmonise exposure assessment methods. We endorse CRD and industry's efforts to get data needed to refine worker exposure assessments and justify increased harmonisation.**

Engagement between industry and Government

9.41 There are effective examples of partnership working between industry and Government on pesticides. We commend the *Subsidised pesticides disposal scheme* as a practical joint initiative. But there is room to improve working-level engagement between Government and industry. Growers have asked for a route to bring sensitive issues to Government's attention. **We recommend that CRD and industry establish an industry-only route of communicating sensitive information, to allow issues to be raised confidentially at an early stage.**

Minor issues

9.42 The evidence on pesticides covered a range of other issues. We briefly address these here and in paragraphs 11.12–13.

9.43 Industry representatives expressed concern that it was hard to read pesticide product labels. This is a commercial rather than regulatory issue, and thus outside the Task Force's formal scope. We believe that manufacturers and users share responsibility for resolving the problem. It is the legal responsibility of users to read the labels before use and to take care in identifying the right product for use. To help users **we recommend that manufacturers ensure that labels are clear and consistent with CRD guidance in its *Labelling handbook*.**

9.44 In line with our vision for a digital future (paragraph 2.37), **we propose an online central register for datasheets for pesticides, so that the requirements for control of substances hazardous to health (COSHH) regulations could be fulfilled digitally rather than on paper. We recommend that CRD and industry together establish how this might best be achieved.**

Licensing of industrial hemp

9.45 Industrial hemp has good environmental, biodiversity and sustainability credentials and the potential to be an important, spring-sown, break crop for UK farmers. However, growing industrial hemp is currently subject to two regulatory regimes. Defra/its agencies and delivery partners implement EU-wide

regulations which restrict growers to varieties with low Tetrahydrocannabinol (THC, the active component in cannabis) and ensure that growers are not deliberately or accidentally growing drugs rather than fibre. The Home Office also regulates the cultivation of all varieties of *Cannabis sativa* (regardless of THC content) under the Misuse of Drugs Act 1971. The UK is the only country in Europe to operate a separate industrial hemp licensing system.

9.48 Until 2009, the hemp industry managed the dual regulatory regime with little problem. For the 2010 season the Home Office tightened considerably the enforcement of the Misuse of Drugs Act. As a result, the hemp industry has become subject to four new administrative burdens (and we were also told that the new licensing forms are not tailored for industrial hemp and contain questions which are irrelevant in this context):

- it is now necessary for each individual grower to be licenced, rather than the former practice of issuing a single licence to the processor;
- it is now necessary for each grower to undertake an enhanced Criminal Records Bureau check, said to be time-consuming and costly;
- there has been talk of introducing restrictions on the precise location where the crop can be grown; and
- the Home Office has also reintroduced charges for licences under the Act for the 2011 season.

9.49 We are concerned that the combination of increased regulatory and administrative burdens and costs, plus inspections under two new regimes, presents significant barriers to industry growth and is nonsense. It is also a clear constraint on competitiveness relative to EU Member States with a single regulatory regime. We do not believe that the combination of controls is proportionate to the risk posed by the crop. In October 2010, we wrote to the Minister of State for Farming and Food with our interim recommendations (see letter at Annex 2) and we reiterate these here.

9.50 In line with our principle that regulatory frameworks should be proportionate to risk of an unwanted outcome, **we recommend that the Home Office should immediately establish the THC-content below which *Cannabis sativa* varieties can be considered to be safe and where its cultivation cannot be considered as intended for drugs use (a figure of 0.5% has been suggested to us). The Misuse of Drugs Act should then be amended to only provide for licensing of *Cannabis sativa* cultivation of varieties with a THC level above the threshold.**

9.51 In our letter to Ministers, we recommended that Defra urge Home Office Ministers to agree with stakeholders a less onerous licensing regime for the forthcoming year. We are extremely disappointed that Home Office has not implemented such a regime for the 2011 growing season. **We recommend that Home Office acts immediately to ensure that a single general licence and inspection regime is agreed until such a time as the Misuse of Drugs Act can be amended, in order to not further restrict the natural expansion of cultivation of this crop.**

Farm-saved seed

9.52 Plant breeders are allowed to collect a royalty on the production and sale of certified seed of protected varieties, under a form of intellectual property protection called Plant Breeders Rights. This system provides plant breeders with an incentive to develop successful varieties, and also stimulates further research and innovation by ensuring that all protected varieties are freely available for use in future breeding programmes.

9.53 The right of plant breeders to charge a royalty on farm-saved seed became EU law in 1994 and was passed into UK law in 1998⁹². Although farm-saved seed offers the same genetic advantage as certified seed, this legislation stipulated that royalty payments on farm-saved seed must be 'sensibly lower' than on certified seed.

9.54 Farmers questioned the need to grow a seed crop on every holding under their control because it is not permitted to trade seed between businesses. This problem particularly applies to contractors who usually work more than one holding but are not able to inter-trade seed even though royalties on home-saved seed are paid. The problem, from a farmer's perspective, is that he must take the mobile seed dresser machinery around each of the farms he controls to dress small amounts for each holding. This means the cost and time taken to dress seed is considerably greater.

9.55 The Task Force understand the importance to the breeder of the royalty payment but the original certified seed (which carries a greater royalty payment than farm-saved seed) bought to grow each tonne of home saved seed is more or less the same whether it is grown on one holding or on each holding. **We recommend that it should be possible to trade home-saved seed between holdings that are linked by being under the same management, but understand that this may require renegotiation in the EU.**

⁹² <http://www.fera.defra.gov.uk/plants/plantVarieties/plantbreedersRights/legislation.cfm>

Chapter 10 TSEs, meat hygiene inspections and food processing

We believe that burdens on business can be reduced without compromising food safety, and recommend:

- **pressing the EU for early decisions on changes to meat hygiene and TSE rules and then implementing reduced regulatory arrangements without delay;**
- **allowing meat processors to obtain risk-based meat inspection services from accredited private sector providers within a system managed robustly by the competent authority;**
- **revisiting the interpretation of legislation relating to antibiotic failures in milk; and**
- **renegotiating the requirement to destroy milk from TB reactors;**
- **removing the Beef Labelling Scheme;**
- **encourage Defra and the Food Standards Agency to engage constructively with the current reviews on the sampling of veterinary residues and trichinella controls; and**
- **ways in which earned recognition would help reduce paperwork arising from food chain information requirements and reduce inspections of poultry and egg producers.**

10.01 The food processing sector plays a vital role in meeting consumer needs and providing an outlet for agricultural produce. It is in everyone's interest that the food processing sector produces food that is safe and free of risk to human health. This is important for consumers as well as the reputations of farmers and the food processing industry. A range of legislation applies to the food-processing industry, including requirements to ensure food safety and hygiene, enforced by the Food Standards Agency (FSA).

10.02 Our report addresses food-processing issues where farmer and processor interests overlap, and the primary processing of farmed produce. Although our report does not address the downstream food supply chain⁹³, the multiple links within the food supply chain mean that our recommendations will interest the wider food processing sector.

TSEs and meat hygiene controls

10.03 Maintaining high standards and, through them, public and market confidence in the safety of our meat and in animal welfare is important for public health and economic growth. EU regulatory controls set the framework for those standards and are monitored by inspectors from national competent authorities. In England the competent authority is the FSA, other than for BSE testing where Defra is the competent authority. Official controls take place alongside the quality and safety systems operated by Food Business

⁹³ This includes the advanced food manufacturing, retail, wholesale supply and catering sectors.

Operators (FBO), who are responsible for the safety of the food and feed that they produce under EU food safety legislation.

10.04 We comment on controls on transmissible spongiform encephalopathies (TSEs) and meat hygiene controls in meat-processing premises. Industry has asked for greater flexibility in these arrangements, so that it can use private-sector services for meat hygiene inspection. Ministers identified meat hygiene controls as a burdensome inspection regime and asked us to make specific recommendations for a more risk-based approach. We have not commented on arrangements for charging for official meat hygiene inspection, but our recommendations are intended to reduce overall costs to public and private sectors through better targeting, efficiencies and market scrutiny.

TSE controls and the EU TSE Roadmap2

10.05 Published in July 2010, the European Commission's *TSE Roadmap2* builds on changes that included lifting the ban on exports of UK beef and cattle. Subject to scientific opinions from the European Food Safety Authority (EFSA), changes to EU regulation that would reduce burdens can be agreed and adopted by EU Member States. This could have a major impact, reducing the burden of these controls, by decreasing the amount of material that must be disposed of as Specified Risk Material (SRM), and lifting the ban on feeding animal proteins derived from non-ruminants to non-ruminants (with no same-species feeding). **We recommend that the Government makes maximum use of existing derogations in EU legislation, fully supports moves to more proportionate and risk-based TSE controls, and implements changes without delay once revised EU legislation comes into effect.** The European Commission's Standing Committee on the Food Chain and Animal Health has agreed to allow the age threshold for BSE testing of cattle slaughtered in the UK for human consumption to be raised to 72 months with effect from 1 July 2011. (It would be disappointing if this change was not implemented on 1 July.)

10.06 **We recommend that official controls on BSE testing and SRM removal in abattoirs are reviewed to ensure that they are fully risk-based (not 'tick-box') and take account of the FBO record of compliance.** Within this review we would include the Required Method of Operation document (RMOP) specified in the Transmissible Spongiform Encephalopathies (England) Regulations 2010, which FBOs must complete and the regulator must approve. We recognise that the RMOP ensures that the importance of BSE controls is properly recognised and standards maintained, in particular that cattle born before August 1996 do not enter the food chain and all animals requiring BSE testing are tested; but it should be implemented in a way that takes account of business practice. The same principle applies to frequency of verification checks on FBO sampling and staining procedures; we question the need for daily official checks at regularly compliant premises.

10.07 **We recommend that the domestic TSE regulations are changed to take advantage of the existing derogation in EU law, which permits authorised cutting plants to harvest head meat.** We understand that there is little demand for this, but it was identified as a restriction. The derogation should be used so that industry is free to respond to market opportunities as they arise.

Meat hygiene controls

10.08 Ultimately, the EU regime should change so that the current prescriptive regulatory requirements are replaced by more risk-based controls. In addition, checks should be carried out by a range of accredited private-sector bodies providing risk-based inspection services, with the competent authority auditing those services and maintaining a national enforcement function. **We recommend that the Government supports moves to more proportionate and risk-based meat hygiene controls and inspection that take account of**

earned recognition. We question the need for ante-mortem inspection by official veterinarians (OV) and would like to see changes to control regimes so that they deal more effectively with the main meat-borne pathogens; being microbial, these cannot be detected by the current inspection processes which are mainly visual, palpatory or by cutting and examination. In the meantime, changes should be made that give FBOs that are consistently competent in meeting regulatory standards the option of private sector provision of inspection services.

10.09 The current EU meat hygiene regime⁹⁴ requires the competent authority to provide official veterinary control and meat inspection in all red meat and poultry slaughterhouses. The control regime has two main elements, inspection and audit. An official inspector must usually be present at all times that the FBO is operating to carry out pre-slaughter and processing inspections and to apply the official health mark. Audit requires periodic checks by the competent authority of FBO procedures and controls. Official inspectors also carry out other animal disease and surveillance work on behalf of Government, in particular TSE controls.

10.10 We heard that the abattoir industry and the livestock sector feel strongly that the current regime is out of date, burdensome, and costly. The food hygiene regulations place a responsibility on FBOs to produce safe food. Industry has made clear its view that the official inspection duplicates quality-control systems that fully compliant FBOs have in place to meet their statutory responsibility. These systems include preventing contamination, ensuring meat is fit for human consumption, and separating/disposing of SRM and waste material. We question the value of a regime that places a statutory obligation on FBOs and also imposes a permanent official presence to check that those obligations are complied with.

10.11 We acknowledge that much of this has already been recommended, in particular by Tierney in 2006⁹⁵. We recognise that the FSA has achieved a great deal since 2006, working within the regulatory framework to make considerable operational improvements and savings, including agreeing Business Agreements with FBOs. The FSA is continuing to work with meat industry representative bodies to review issues relating to current meat controls and with the EU on future controls. However, the strength of the representations made to us suggest that there is value in considering a very different approach to the way that the current official controls are carried out. We recognise that these may change significantly if future alterations can be achieved to the EU rules which may result in a truly risk-based approach that no longer includes a prescriptive inspection requirement.

⁹⁴ EU regulations 852/2004; 853/2004; 854/2004

⁹⁵ "The approach of putting government inspectors into every plant is peculiar to the meat industry. It is not a model favoured elsewhere in the food industry, even where more risky products and processes are involved. Similarly in the wider economy, those businesses operating even the most dangerous activities are themselves responsible for managing risks. Public inspection agencies supervise their operations usually through spot checks and risk based audit. During the review, we have not been able to find good evidence for continuing to treat meat so differently. The FSA should move progressively towards aligning meat hygiene regulation more closely with the rest of the food chain. This would involve: Food business operators (FBO) assuming full responsibility for compliance, without OVs and meat inspectors standing over them checking what they do. This requires FBOs to implement effective HACCP plans and to be fully accountable for compliance with regulations

- External inspection, audit and enforcement based on risk assessment, with opportunities for earned autonomy and incentives for compliance. The Competent Authority targeting resources on those parts of the industry which pose the greatest risks. Plants with a track record of compliance being trusted more and subject to unannounced spot checks and risk based audit. There would be quicker and more effective enforcement against non-compliance
- Better cost effectiveness and more efficient operation of the inspection service. This requires both the delivery agency and FBOs to organise their activities more efficiently. Incentives include tight cost targets for the delivery body and a charging regime to encourage efficient use of the inspection service by FBOs
- Increased contestability of service delivery. There is no reason why the delivery of Official Controls need remain a monopoly, whether public or private. Meat plants come in shapes and sizes with different needs and a 'one-size-fits-all' approach is unlikely to work best. Allowing different organisations to work alongside a TMHS [transformed Meat Hygiene Service] to deliver meat inspection would allow more flexible responses to the sector's diversity, encourage innovation, provide an element of choice and comparison, open up more career opportunities for inspection staff and help the FSA to manage delivery risks."

10.12 We considered different approaches to achieving practical and effective change. For various reasons we felt that these three approaches would not be the right way forward:

- maintaining the status quo and relying solely on piecemeal changes to the present EU inspection rules will not deliver the radical change that is needed. We know that EFSA is working on modernising EU meat inspection requirements and will report on a sector-by-sector basis. We expect that changes should be agreed and implemented as soon as possible following advice from EFSA;
- establishing a national control body as a delivery partner. Formally delegating powers to a private-sector partner or partners to provide meat hygiene control services seems to have potential to deliver some benefits through pressure on cost-efficiency through the marketplace. However, it also risks simply substituting one inspection body for another. It may also not be possible under current EU rules. European legislation prevents the central competent authority from charging more than the full costs of official controls. It may not be possible for a commercial operator acting solely as a control body to make a profit from official controls; and
- an immediate move to complete privatisation of meat hygiene control had been suggested to us. Although this should be the long-term aim, we do not believe that the structures or confidence in standards are in place to support it at the present time. Nevertheless, it must be at the forefront of options when considering future changes in the EU control regime.

10.13 The best way to build on recent developments and take things to the next level is to adopt the principle of earned recognition, and to recognise the effort invested by some in the industry in getting things right. This is already permitted to some degree. It is also taken into account in determining the frequency of audit visits to FBOs and when establishing inspection levels through the Business Agreements between FSA and FBOs. It must now be used more widely to test the feasibility of moving from absolute reliance on state-provided official controls to increase confidence in assurance provided by the private sector in a way that can inform the competent authority's risk assessment and determine those premises that need to be managed most closely.

10.14 In preparing the current meat hygiene rules, EU legislators considered that a strong official presence was needed in meat plants to protect public health, and animal health and welfare. The meat-processing sector encompasses a range of operations, many of which operate to commercial standards that exceed the statutory minimum. There are some, however, that give cause for concern and require increased official control to keep them within the law. There are even a few that have failed to meet their obligations fully. As a result official controls are designed to deal with the lowest common denominator. This can hold back competition and innovation for those who might be deemed 'consistently competent'. For such businesses, a permanent state inspection presence does not add significantly to the desired outcomes of protecting public health and animal health or welfare. In some premises the presence of inspectors may lead the FBO to rely on them as a safety net to provide the controls that are the FBO's responsibility.

10.15 **We recommend that consistently competent FBOs should be able to use accredited private sector bodies to provide meat inspection services. We recommend that the FSA should approve and designate these accredited private-sector bodies as control bodies.** In making this recommendation, we underline that the FSA has a very important role as a national competent authority for maintaining standards and providing a national enforcement service. Audit of FBO systems is the most important official control from a public health perspective. It should continue to be a function of the competent authority and be carried out by a small team of experienced auditors who are responsible directly to the FSA. But ante- and post-mortem inspections may benefit from market efficiencies if commercially operated control bodies have the opportunity to provide them.

10.16 Information provided to us from a commercial pilot study suggested that FBOs could reduce the costs of official controls by between 20–35% through private-sector provision. Whether that is accurate, and notwithstanding the possible consequent changes to public sector charges, the size of the potential saving suggests that it would be wrong not to give the matter very positive consideration. Consistently competent FBOs should therefore have the option of choosing their inspection providers, whether this is from the private or public sector. The public sector option should remain as it may, for example, continue to be the choice of FBOs engaged in international trade. We understand that a change of this magnitude is subject to natural concerns about maintaining impartiality and standards, compatibility with the EU regulations and clearance with the European Commission. Future consideration must draw on the experience of the meat industry and regulators in other countries, in particular the Netherlands, where we understand that meat inspection services are outsourced to the private sector.

10.17 Such an approach needs detailed discussions, with the first being to establish what should be recognised as ‘consistently competent’. **We recommend that a joint industry/official group with an independent Chair considers the criteria for accepting provision of meat inspection services by accredited third parties and reports to FSA as soon as possible.** We cannot pre-empt the outcome of those discussions, but it seems to us that that an accredited service-provider should, as far as possible within the regulatory framework:

- be independently accredited by the UK Accreditation Service;
- be designated as a control body;
- have an arm’s length relationship with the FSA , which will be responsible for monitoring and auditing performance;
- operate under agreement with Government to carry out other regulatory checks;
- provide ante-mortem and meat inspection;
- have powers to direct an FBO to remove or detain material, require improvement action for minor non-compliance and reduce line speed; and
- apply the health mark.

10.18 To qualify to use private-sector accredited services, a FBO should be deemed to be consistently competent if they have: a record of consistent compliance; effective structure and facilities; established and effective management; and agreed protocols with the competent authority and the control body.

10.19 **We recommend greater use of cold inspection for small abattoirs.** This will allow the official veterinarian to carry out pre-slaughter checks and inspect carcasses and offal from the previous day’s operation in one visit. This would save time and costs, and simplify arrangements for official inspection. This option should be available for small FBOs that can demonstrate to the FSA that they have a record of consistent competence and the structure and facilities to identify and store separately carcasses and relevant by-products

10.20 **We recommend that the FSA continues to work with industry to develop trials of innovative inspection arrangements,** such as visual inspection for lower-risk categories such as lambs and young pigs. FSA should discuss these trials with the European Commission to provide evidence to support recommendations for change.

10.21 We heard complaints from livestock producers that slaughterhouses sometimes reject dirty animals. We understand the hygiene reasons for doing so: clearly, producers must do everything necessary to present clean animals at the abattoir. Moreover, we appreciate that this is primarily an issue for the market to address. However, there are major health and safety concerns about practices such as belly-

clipping live cattle (one way of cleaning a dirty animal): in light of our concerns about on-farm safety (paragraphs 4.81–83), this is not a practice that we want to see continue. If dirty animals are presented, abattoirs already have the option to hold animals back and slow the line to avoid possible contamination; we suggest that abattoirs take advantage of this facility. But there should also be an option to return animals to the producer, as applies in Scotland. **We recommend that there should be consistency of approach in England and Scotland when dirty animals are presented for slaughter, with the option of returning animals to the producer.**

10.22 We received several specific suggestions for changes to meat inspection requirements. **We recommend reviews of the following elements, where there appear to be issues of consistency, flexibility or propriety that should be addressed:**

- consistency in permitted process for sterilising knives etc in abattoirs and cutting plants;
- inspection arrangements for udders and testicles;
- greater flexibility for FBO staff to inspect and approve young animals and offal;
- arrangements for moving edible co-products between licensed meat premises;
- adopting risk-based controls to regulate the period between slaughter and minced-meat production; and
- the requirement for the FBO to collect forms relating to transporter cleaning of vehicles.

Other food-processing issues

Food safety controls

10.23 Our evidence gathering highlighted industry concerns that food-safety controls that apply to certain aspects of food processing are unnecessarily rigorous. Concerns were raised around:

- the perception that authorities in England were interpreting rules on antibiotic failures in milk more strictly than some other Member States. One respondent felt that this was a consequence of the Bowland issue, which concerned the breaching of EU food-safety rules, including controls on antibiotic residues in cheese. One respondent said that the disposal routes for milk that has failed antibiotic tests needed to be clarified;
- the ban on milk from cows that react to the tuberculosis test (“TB reactors”) entering the food chain. Respondents suggested that the regulatory decision is not justified by scientific evidence, since pasteurisation means that such milk does not pose a risk to food safety. They highlighted the costs of this policy for producers, and asked for pasteurised milk to be allowed to enter the food chain. We also heard that the necessary mechanisms are not in place to enforce the ban;
- the suggestion that Defra could push for changes to allow for the milk samples required under hygiene regulations to be used for the testing of milk for residues of veterinary medicines. It was thought that this would reduce the complexity and burdens of sampling; and
- the extent of trichinella testing required for the UK to attain ‘negligible risk’ status. Respondents suggested an alternative, more proportionate, risk-based approach. This would involve sampling of outdoor, rare and pedigree breeds and cull sows.

10.24 **We recommend that the FSA should reopen discussions with the European Commission about the interpretation of legislation relating to antibiotic failures in milk. We recommend that Defra and the FSA should work with industry to establish a suitable way forward for disposing of milk that has failed antibiotic tests.**

10.25 We agree with industry that, on scientific and safety grounds, the requirement to destroy milk from TB reactors is not evidence based. However, to allow milk from TB reactors to enter the food chain, we must be confident that we can identify TB reactors and know that milk has been pasteurised. **We recommend that Defra, the FSA and dairy trade associations should open discussions on how pasteurised milk from TB-reactor cows could safely enter the food chain.**

10.26 We note that the European Commission is reviewing legislation requiring the sampling of milk for veterinary residues. **We recommend that Defra should engage constructively with this review in order to ensure that the surveillance requirements are proportionate.**

10.27 Consistent with the overall principles of this report, we agree that trichinella controls should derive from a proportionate risk-based approach. Therefore **we endorse EFSA's review into trichinella controls.** The review aims to achieve this approach and clarify the criteria for regions of negligible risk. We acknowledge that a risk-based approach may well involve increased testing of certain parts of the pig population, such as outdoor pigs. Although this would support a future resubmission of the UK case for negligible risk (which, if secured, would benefit the industry), we feel that the current testing regime provides a sound basis for identifying trichinella in the UK. Any further testing would seem excessive.

Abattoirs and slaughterhouses

10.28 Our evidence gathering highlighted problems about particular regimes that apply to abattoirs and slaughterhouses, including:

- concerns that many abattoirs have inadequate or no vehicle washing facilities (and this despite legislative requirements and corresponding enforcement arrangements). Respondents suggested that this raised the risk of poor bio-security and raised costs for hauliers as they source alternative wash sites;
- the limitations that EU hygiene regulations place on the recycling of water for the cleaning of slaughterhouses. From the food safety point of view, re-used water of a non-potable standard, which satisfies animal health disease standards, can only be used in certain areas of the slaughterhouse or at particular stages of the cleaning process⁹⁶. Various respondents called for a review of these requirements, which they believe place unjustified barriers on the reuse of water; and
- demands for the Government to introduce a sheep carcase classification scheme, supported by regulation, in order to help ensure that payments made by abattoirs to producers are transparent.

10.29 **We recommend a dialogue between the haulage industry, abattoirs and the FSA to ensure that abattoirs provide vehicle-washing facilities in line with their obligations, and appropriate actions are taken against those that do not provide adequate facilities.**

10.30 We note that the European Commission is considering a recent EFSA opinion on the possible risks of recycling of water used for washing carcasses. **We recommend that the FSA should review the opinion, including the risk assessment, and discuss with Ministers whether the UK should press for revised arrangements to allow for greater recycling of water in slaughterhouses.**

10.31 We agree with industry about the value of increased transparency over carcase classification standardisation and the payments made to producers. However, we believe that this can best be delivered through industry co-operation. There is no need for Government to exercise the option provided in EU

⁹⁶ For example, to clean the lairage, dirty parts of the slaughterhouse and live poultry crates. In other situations, recycled water can be used as the first part of the cleaning process in the slaughter hall, floors and walls. This is provided that the equipment that comes into contact with fresh meat is then properly cleaned and disinfected, usually by using potable water and disinfectant. This must be verified by appropriate HACCP procedures.

legislation of making sheep-carcase classification compulsory in line with the Community scale of classification. Such a move would also impose an additional burden on industry.

Frozen foods

10.32 One respondent called for the review of a forthcoming EU regulation⁹⁷ that would prevent the practice of selling previously frozen poultry meat in chiller cabinets. Retailers felt that the regulation would not address their concerns, and would hamper the supply chain.

10.33 We regret that it will not be possible to easily overturn the EU regulation given its recent adoption. However, we think that this experience provides useful lessons for future negotiations. **In line with our strategic recommendation relating to Government–industry partnership in EU negotiations, we encourage Defra to be more inclusive of comments received from the industry when preparing for negotiations.**

Labelling and information

10.34 We heard concerns that requirements on producers to provide food chain information to slaughterhouses create burdens and duplicate other regimes. The requirements arise from EU food hygiene legislation⁹⁸, and provide assurance that animals (poultry, pigs, horses, calves, cattle, sheep and goats) received by slaughterhouses are healthy. Generally, slaughterhouses cannot slaughter animals if they do not have accompanying food chain information.

10.35 Guidance developed between the FSA and industry aims to minimise the burdens of providing information. Ultimately it is for slaughterhouse operators to dictate the information they require from suppliers, and the required format.

10.36 The Beef Labelling Scheme⁹⁹ implements EU rules intended to ensure the provision of accurate labelling information and traceability of beef and veal. It requires any operator who wants to include claims on labels (such as regional or local origin, production methods or characteristics of the animal or beef) to seek approval from the Rural Payments Agency on the basis of verification by an independent assessor. We heard views that the labelling scheme is unnecessarily burdensome and restricts competitiveness.

10.37 We did not receive any substantive ideas about inspection regimes or process for food businesses. It seems that official inspection is accepted and understood. However we heard of a number of concerns about inspectors' inconsistent interpretation of requirements, such as the labelling of directly sold goods, the identification of ingredients and amounts on labels, and the voluntary 'traffic light' labelling scheme.

10.38 We also heard about the costs arising from FSA guidance on safe methods for controlling cross-contamination between raw and cooked meats. The guidance supports statutory obligations on food businesses to take measures to control food-borne pathogens, including *E. coli* O157. Respondents expressed concerns that the guidance means that SMEs have to purchase two expensive machines to do the same job (e.g. slicing machines) as there appears to be no option of cleaning the equipment between use for the two products.

⁹⁷ Regulation (EC) No 843/2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat.

⁹⁸ Regulation (EC) No 853/2004 laying down specific hygiene rules for food of animal origin

⁹⁹ Otherwise known as the Voluntary Labelling Scheme

10.39 We welcome the FSA review of the relevance and effectiveness of current food chain information requirements, and the level/nature of duplication with other regimes. **We recommend that existing information from contractual arrangements between producers and slaughterhouses, and/or farm assurance schemes, should replace the need for food chain information requirements.**

10.40 **We recommend that the Government should continue to seek to remove EU rules giving rise to the Beef Labelling Scheme.** The requirements for verification of voluntary label claims seem to us to be disproportionate. In the meantime, industry should make use of the increased choice of approved assessors, some of whose services are aimed specifically at small producers in order to reduce costs.

10.41 The guidance following the 'Pennington report'¹⁰⁰ into an *E. coli* O157 outbreak in 2005 strongly suggests the need for separation between machines processing raw and cooked meats. Against this background, we have not seen any evidence that would allow us to safely recommend allowing the use of the same machinery for raw and cooked meat. If industry wants to progress this matter, we suggest that it produces more detailed scientific evidence to support its case.

Sales, packaging and marketing

10.42 We received a range of submissions about burdens arising from regulations covering sales, packaging and marketing. These included the following:

- the cost and bureaucracy of additional inspections envisaged under new EU Regulations on the marketing of poultrymeat¹⁰¹; and
- the economic barriers that egg-selling and packaging regulations present to smallholders maintaining breed diversity. The regulations require inspections of laying flocks for animal health purposes. The UK makes use of a derogation meaning that flocks of less than 50 birds are not inspected. Respondents suggested that flocks with 50–100 birds should also be exempt, presumably by seeking a wider derogation from the EU.

10.43 To address the above concerns, **we recommend an earned recognition approach to reducing the inspections of poultry and egg producers. Existing assurance arrangements should be used in each case to provide the necessary assurance and reduce burdens on the industry.**

Import controls on 'high-risk' products of non-animal origin

10.44 Since January 2010, imports of certain 'high-risk' feed and food from certain non-EU countries (e.g. potatoes from Egypt) can only enter the UK through designated points of entry where official controls are carried out¹⁰². Importers and feed and food business operators must pre-notify the points of entry before the arrival of a consignment and pay for the processing and testing. The horticulture sector expressed concern that the testing regime fails to take into account the perishable nature of fresh produce.

¹⁰⁰ <http://wales.gov.uk/ecolidocs/3008707/reporten.pdf?lang=en>

¹⁰¹ Commission Regulation 543/2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat

¹⁰² Commission Regulation (EC) No 669/2009 implementing Regulation (EC) No 882/2004 as regards the increased level of official controls on imports of certain feed and food of non-animal origin

10.45 We appreciate that this law aims to protect human health from food produced to lower standards than those of the EU. But we are concerned that products meeting required standards may be unnecessarily delayed. **We recommend that the FSA work with trade bodies, ports and designated laboratories to minimise delays of products produced to internationally recognised standards.**

10.46 We also believe that introducing an approach based on earned recognition (paragraphs 3.12–30) would offer benefits for both importers and inspection agencies. We are pleased to learn that the FSA has initiated a pilot study to gather evidence for a system to fast-track produce where there is evidence that the importer is adhering to recognised standards. We fully support this study and, in line with our strategic principles of earned recognition and risk-based regulation, the aspiration of fast-tracking low-risk consignments. We acknowledge that to roll out this new approach will need negotiation in the EU.

Chapter 11 Supporting recommendations and endorsements

11.01 This chapter summarises Task Force consideration on issues where we endorse decisions that have already been taken – often during the time we have been working – rather than making proposals for change. We identify these issues, and the industry concern behind them, chapter-by-chapter. Where no chapter is mentioned, we have no endorsements to make.

Chapter 4 Business and management Agricultural Minimum Wage

11.02 We endorse Defra’s decisions to repeal the Agricultural Wages Order and abolish the Agricultural Wages Board as soon as there is the legislative time available. We believe this will address a number of concerns raised with us about the Order/Board, particularly that it was “archaic and burdensome”.

Workers Registration Scheme (WRS)

11.03 We strongly support the decision not to press for continuation of the Workers Registration scheme, which expired in April 2011. Consultees argued that the WRS placed a number of unnecessary regulatory burdens on both employer and employee, without delivering any apparent benefit.

Chapter 6 Environment and land management Review of fertiliser regulations

11.04 We are pleased to learn that Defra is reviewing the broad legislative and policy landscapes for fertilisers. Should regulation be necessary, we understand that Defra aims to produce legislation that is up to date, coherent and gives effect to necessary EU requirements, while recognising the protection that the current regime provides to business. This fits well with Task Force principles. Updated regulations will better balance the needs of farmers/fertiliser manufacturers/merchants with sustainable food production.

Recording abstracted amounts of water

11.05 We welcome the recent publication of Environment Agency (EA) guidance on a more flexible approach for farmers to take water meter readings¹⁰³, and commend the EA for working in partnership with the National Farmers Union to develop a more customer-friendly approach to verifying missed readings. We hope that this will address concerns raised with us that the EA (which inspects farmers’ records of water abstraction, as agreed in their water abstraction licence) has sometimes pursued minor breaches in paperwork (i.e. process) – even though the total abstraction did not exceed the amount allowed (i.e. no impact on outcomes).

¹⁰³ http://www.environment-agency.gov.uk/static/documents/Business/Abstraction_metering_briefing_220211.pdf

Rural Development Programme for England

11.06 In the light of the closure of Regional Development Agencies, we welcome Defra's announcements that it will assume core responsibility for the Rural Development Programme for England (RDPE), and that the RDPE will largely be delivered at the national level. We were initially concerned that Defra would allocate the responsibility to the Local Enterprise Partnerships (LEP). In our view, the LEP set-up, with separate small allocations of funding, would have been inadequate to deliver meaningful projects. We believe that the best outcomes for customers can be achieved by having a standardised national approach for all processes (e.g. applications, project appraisals) with common forms and communication material. We believe this will help bodies applying for RDPE funds to run national projects.

Waste

11.07 We endorse the EA's engagement with the mushroom industry on ensuring light-touch regulation. As a result, exemptions have been provided for the recovery of spent mushroom compost. We note that the EA has encouraged the industry to consider submitting an application to the End-of-Waste panel.

11.08 We endorse new arrangements for simplifying the registration of farm businesses that carry waste. We think that the new risk-based system ensures that farmers are not subject to unnecessary costs and administrative burdens.

11.09 We endorse the Government's partnership with industry and other interested parties to produce a joint programme of work to deliver a substantial increase in energy from waste from anaerobic digestion. We encourage the Government to work with the farming and food-processing industries as it carries out this work.

Hydropower

11.10 We endorse the recent changes introduced by the EA to bring all applications for hydropower schemes into a single unified form and internal process. Whilst recognising that it is legally complex, we endorse proposals to move permissions like water abstraction and impoundment into the environmental permitting framework, as a step towards having a single hydropower permit. This will be an improvement on the typical five permissions needed previously (flood defence consent, water abstraction, impoundment, and fish and eel pass approval). We hope that this will address concerns that the process for obtaining the permissions for a hydropower scheme is unduly burdensome, and will minimise the risk of poorly designed schemes which can have a negative effect on the aquatic environment.

Chapter 8 Farmed animals Protection of Badgers Act 1992

11.11 We are pleased that the Government is considering wide reform of wildlife management legislation, including the Badgers Act. The Act was drawn to our attention as having particular resonance with many in the farming community. We heard that its need and purpose should be reconsidered in the light of current badger numbers.

Chapter 9 Growing and crops

Minor pesticides issues

11.12 We heard that the EU Sustainable Use Directive will require the training of *garden centre* employees who handle pesticides sales. In fact there is an existing requirement for all those selling pesticides to be trained. The training requirements for distributors will be slightly different under the Directive; we understand that the Government is committed to applying the new rules so as to impose the minimum burden on business. In particular, the Government is working with industry and training providers to ensure that training is proportionate and that training requirements for those selling amateur products in garden centres are less than those selling professional products via wholesalers.

11.13 We strongly support Defra's intention to take advantage of the exemption for micro-distributors (those selling small amounts of certain amateur products) from some of the requirements in the Sustainable Use Directive. Not to do so would constitute gold plating under the definition in the Coalition Government's *Guiding principles for EU legislation*.

11.14 We are pleased that our early views on the issue helped ensure that the product 'Vectobac 12 AS' (*Bacillus thuringiensis israelensis*) to tackle midge larvae in watercress kept its authorisation for use.

Spray notification

11.15 We endorse Defra's proposal (as expressed in its recent response to the consultation on the EU Strategy for Pesticides) that it is not appropriate to introduce a statutory requirement for farmers and growers to provide public notice of planned spray operations. In line with our strategic principles of industry taking responsibility and farmer engagement with local communities, we agree that it is sufficient for farmers and spray operators to continue to develop good relationships with their neighbours. We believe that Defra's approach (if adopted) would address industry concerns about the additional burdens on growers were spray notification made a statutory requirement.

Chapter 10 TSEs, meat hygiene controls and food processing

Meat preservatives

11.16 We are pleased that the European Commission has decided not to ban sodium nitrite and potassium nitrate from being used as meat additives. We received concerns from industry that such a ban would not be justified, as the levels of these additives in meats were below existing thresholds, and vegetable cures that were being considered as substitutes do not offer a workable alternative.

Labelling and information

11.17 We endorse the work of the Local Better Regulation Office with the aim of addressing inconsistent interpretation of legislation by local inspectors.

Cloning

11.18 In the context of reducing unnecessary regulation, we agree with the advice given to Ministers by the Food Standards Agency (FSA) Board on 7 December 2010 that, based on current evidence, there are no food safety grounds for regulating the sale of meat and milk from the descendants of cloned cattle and pigs. The FSA Board also said that, for food safety purposes, compulsory labelling of meat and milk from

offspring of clones would be unnecessary and disproportionate, providing no significant food safety benefit to consumers. We believe that this addresses concerns raised with us that restrictions on the use of products from the descendants of cloned animals are unjustified, as there are no safety issues with their consumption.

Food hygiene regulations

11.19 We welcome the partnership between the FSA, Defra and industry to identify and implement interventions that will reduce campylobacter, including research to identify possible treatments. Microbiological controls and testing should be an important part of the EU regime to protect human health. We agree that the FSA should continue to prioritise research to provide the evidence to support the acceptance and use of antimicrobials at an EU level. A full range of options and processes should be available to assist industry, so the FSA and industry must work together to ensure that the control framework drives best practice. The UK should not adopt its own national control measures independently of other EU Member States. We agree with the FSA that interventions should not weaken good husbandry and hygienic practices, and should be transparent for consumers. We believe that this addresses concerns raised with us that highlighted the challenge of controlling campylobacter contamination.

Sales, packaging and marketing

11.20 We received a submission suggesting that goat-owners should be able to sell unpasteurised milk at the farm gate. We note that food-business operators are already allowed to sell goats' milk without pasteurisation, if the milk meets the standards for raw milk set out in the Food Hygiene (England) Regulations.

Export

11.21 We received evidence suggesting that controls on the export of milk powder during a disease outbreak are too restrictive, and should be reviewed. We note that the European Commission has prepared safeguard measures that it may introduce following a disease outbreak. It has received legal advice it should not introduce legislation in advance. When put into place, the safeguard measures would allow the relaxation of controls on exports of highly processed food products that would not pose a risk of disease spread. We think that these plans provide the necessary reassurance for the food-processing industry that controls will be reassessed following a disease outbreak.

Annex 1 Task Force evidence gathering process: list of contributors

Contributing organisations and individuals

The following organisations provided written submissions.

50 Club, AIC, Agricultural Christian Fellowship, Animal Health, Association of Independent Crop Consultants, Association of Independent Meat Suppliers, Association of Labour Providers, Association of Show and Agricultural Organisations, BCM, Berry Gardens, British Hospitality Association, British Independent Fruit Growers Association, British Institute of Agricultural Consultants, British Meat Processors Association, BQP, British Egg Industry Council, British Poultry Council, British Retail Consortium, British Sugar, British Summer Fruits, British Wool Marketing Board, British Veterinary Association, Country Land and Business Association, Campaign to Protect Rural England, Central Association of Agricultural Valuers, Coastal Grains, Commercial Farmers Group, Consumer Focus, Countryside and Community Research Institute, Creswell Farms, Co-operative farms, Dartmoor Commoners' Council, Devro Casings, Dorset Agricultural Advisory Service, Dairy UK, East of England Trading Standards Association, Elsham Linc Ltd., Environment Agency, European Food and Farming Partnership, Federation of Small Businesses, Food and Drink Federation, Food and Environment Research Agency, Food Industry Better Regulation Working Group, Food Standards Agency, Fresh Produce Consortium, Game and Wildlife Conservancy Trust, Gangmasters Licensing Authority, Gin and Vodka Association, Grants Veterinary Services, Grasslands Trust, Great Glemham Farms, Grocer Magazine, Health and Safety Executive, Horticultural Development Council, Horticultural Trades Association, Institute of Agricultural Management, Institute of Agricultural Secretaries, Jersey Cattle Society, Livestock Auctioneers Association, LANDEX, LANTRA, Linking Environment and Farming, Local Better Regulation Office, Local Government Regulation, Maddock Kembery Meats, National Association of Agricultural Contractors, National Association of British and Irish Miller, National Beef Association, NFU, National Federation of Young Farmers Clubs, National Livestock Movements Database, National Trust, Natural England, National Office of Animal Health, Norfolk Country Council Trading Standards, National Pig Association, National Sheep Association, North Yorkshire Waste Action Group, PD Hook, Potato Council, Rare Breeds Survival Trust, Road Haulage Association, Royal Association of British Dairy Farmers, Rural Payments Agency, Royal Society Protection of Birds, Royal Society Prevention of Cruelty to Animals, SALSA, School Food Trust, Shearwell Livestock Movements Database, Soft Drinks Association, Soil Association, Tenant Farmers Association, Tenant Reform Industry Group, Thames Water, Trading Standards Institute, UK Vineyards, UNITE, Upper Teesdale Agricultural Support Service, Waitrose Supply Chains, Water UK, Westpoint Vets, Wildlife Link, Wildlife Trust, Yorkshire Agricultural Society, and XL Vets.

92 individuals/farms sent us written contributions which provided us with a variety of views including private insights into the impacts of regulations on their individual businesses. Many others participated in workshops we ran around the country and/or filled in their views via *Farmers weekly*. We also had about 5,000 hits on our website. We reiterate our gratitude to all contributors.

Annex 2 Copies of Task Force letters to sponsor Minister with interim recommendations

Letter 1: Cultivation of industrial hemp

TASK FORCE ON FARMING REGULATION

Chair, Richard Macdonald

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FarmRegulationTaskForce@defra.gsi.gov.uk

12th October 2010

To Jim Paice, Minister of State for Agriculture and Food

Dear Minister,

Re: Cultivation of Industrial Hemp

In June, you asked me to chair an independent Task Force to provide Government with advice on how to reduce the regulatory burden on farmers and food-processors and how best to achieve a risk-based approach to regulation. This Task Force is part of the Government's wider strategy on better regulation, and a member of the Better Regulation Executive attends Task Force meetings. As you know, my Task Force's remit is to look at unnecessary, conflicting, duplicative, gold-plated and unnecessarily complex regulation, implementation, inspection and enforcement – in as far as it affects farming and food-processing in England. We are due to report formally in April 2011, but are free to engage in urgent priorities ahead of that date.

Given our remit, the current conflict between the UK Misuse of Drugs Act 1971 and EU legislation designed to ensure that industrial hemp cultivation is only carried out using low-THC varieties which are not a drugs risk (EU Regulation 73/2009) has come to the Task Force's attention. We are aware that there are currently strong views amongst industry stakeholders that the 1971 Act should be amended so as not to impact on the cultivation of those varieties intended for industrial

rather than drugs end-uses. I am aware that the industry has made direct representations to Home Office Ministers and that yourself and DECC ministers have also expressed concerns over the negative effect on the development of the industry that are likely to arise if a decision is taken to reintroduce charges for licensing under the 1971 Act.

The Task Force is very concerned that the current legislative situation provides a disincentive to the expansion of domestic cultivation of industrial hemp, and that – without prejudice to the wider context of the responsibility- and cost-sharing agenda – that this may be exacerbated by the reintroduction of charging for licensing. We understand that hemp is a crop which has potentially very bright prospects in England (and more widely in the UK), where we are at the forefront of developing new, high-value, uses for hemp fibre, particularly in the automotive and construction industries. We believe there is a real risk that our agriculture and wider industry could lose out to competitors in other EU countries that are not encumbered by the extra layers of legislation and cost that exists in the UK.

The Task Force considers that the Home Office has a clear opportunity to reduce burdens on industry, and reduce costs for both industry and Government, without jeopardising its overall desired outcome relating to control of the cultivation of *Cannabis sativa*.

It is our view that the Home Office should, as a matter of urgency, initiate a study to establish the THC-content below which *Cannabis sativa* varieties can be considered to be safe and where its cultivation cannot be considered as intended for drugs use. The Misuse of Drugs Act 1971 should then be amended to only provide for licensing of *Cannabis sativa* cultivation of varieties with a THC level above the threshold.

In the meantime we strongly recommend that you urge Home Office Ministers to agree with the stakeholders a 'light-touch' licensing regime for the forthcoming year that does not restrict the natural expansion of cultivation of this crop. An extension of the interim arrangements in place for the 2009/10 growing season would be suitable.

Yours sincerely,



Richard Macdonald

Letter 2: Poultrymeat (England) Regulations 2010

TASK FORCE ON FARMING REGULATION

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31 October 2010

To Jim Paice, Minister of State for Agriculture and Food

Dear Minister,

Re: Poultrymeat (England) Regulations 2010

Further to my letter of 12 October (cultivation of industrial hemp) the Task Force has identified a further measure that we must draw early to your attention as it affects two of our areas of reference – being both disproportionate and introducing a new inspection requirement.

The Task Force notes that these domestic regulations, due to come into force later this year, implement EU controls, that have entered law despite strong resistance from Defra – efforts that we thoroughly welcome. The Task Force acknowledges the benefits (eg to the consumer) of regulating ‘special marketing terms’ (such as ‘free range’) that apply to poultrymeat, but is concerned at the disproportionate nature of the proposed new inspection regime, in particular the requirement for official inspection of farm premises for each new crop of birds (effectively every six weeks) to ensure that producer’s production claims remain valid.

In the short term, we acknowledge that Defra has tested the options and has very little room for manoeuvre. But there may be ways in which future burdens may be reduced. Accordingly, we make one offer and one suggestion. First, we offer to allocate some Task Force resource to consider a more appropriate future approach, to help Defra policy leads explore further the potential role of private-sector assurance schemes in alleviating the inspection burden. On farms at least, we note that the proposed regulator-inspection regime will – of necessity - partly overlap with the two main poultry assurance schemes (Assured Chicken Production – which accounts for 85% of chicken meat produced in England - and Quality British Turkeys), such that many producers will be subject to both private-sector and state regulator inspections. This would provide an early study in the development of the Task Force principle of “earned recognition”.

Second, we propose that Defra conduct a post-implementation review of the impact of legislation and the new inspection regime. We suggest that this include an assessment of whether the proposed frequency of crop inspections (and associated costs on farmer/food supply chain and regulator) is matched by the benefits that are expected to result. Subject to the outcome of such a post-implementation review, there may be grounds for pushing for a more risk-based approach to enforcement of market management regulation in Brussels.

Yours sincerely,



Richard Macdonald

Letter 3: Single Payment Scheme and Cross-compliance

TASK FORCE ON FARMING REGULATION

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6th December 2010

To Jim Paice, Minister of State for Agriculture and Food

Dear Minister,

Re: Single Payment Scheme and Cross-compliance

I am writing to set out the Task Force's preliminary views on the Single Payment Scheme and Cross-compliance. I must stress that it is our intention to discuss this matter further, but given the opening of negotiations in Brussels on reform of the Common Agricultural Policy (CAP), we thought it helpful to make this initial input now. In doing so, we recognise that some of our recommendations will require amendments to EU rules which are only likely to be achievable through those negotiations. However, while any new CAP rules may not apply until 2014, we urge the Government to seize any opportunities before then to introduce any of the individual recommendations and to apply the principles we have set out to any new proposals from the earliest possible date. I should also underline that we have attempted to contain our views to our brief: better regulation, and not extend into wider CAP policy. We also promise fuller, more reasoned, recommendations in our main report, due for publication in April 2011.

SPS and Cross-compliance

1. The Task Force's views are based on the strong opinion that, particularly in fiscally constrained times, the provision of large amounts of public funding is entwined with a need for measurable outcomes that demonstrate how claimants are contributing to the provision of public goods. Cross-compliance should remain an essential part of the Single Payment Scheme (SPS). Nevertheless, the Task Force believes that there is significant room for simplification, both for the recipients (farmers) and the administrators (the RPA). The Task Force has examined the SPS and cross-compliance through the filters of its remit (gold-plating, unnecessary regulation, inappropriately complex process).

2. In preparing our recommendations, the Task Force has gathered evidence from a wide range of sources and has met with officials from Defra and its family (including Rural Payments Agency and its inspectorate, Animal Health, the Environment Agency and Natural England), who have all been extremely helpful.

3. Our proposals can be divided into three categories: those which affect all aspects of the CAP; those specific to the SPS; and those specific to cross-compliance. This paper will not address issues surrounding inspections or livestock identification and movements as the Task Force has

separate work-streams focusing on these. We believe these issues are not essential to initial CAP talks; our final report will contribute relevant recommendations in these areas.

Overarching principles

4. Most of what the Task Force is examining is aimed at **simplification and reducing complexity**. We strongly believe that every CAP proposal - including those in the recent European Commission Communication - should be held up against these principles. Indeed, the Communication talks of simplicity but appears to introduce immediately questionable levels of complexity.

5. We believe that regulations across the piece, including CAP and cross-compliance, should, whenever possible, **focus on outcomes not processes**. This is particularly true in terms of regulatory compliance: regulators and inspectors should be concerned and rigorous in their judgement when the outcome of a regulation has not been met, rather than when a process has merely not been completed.

6. The Task Force believes there should be more scope for Government and EU institutions to trust farmers, through developing systems of **earned recognition** – something that will feature across all of our report. For example, better use of accredited third-party audits when determining the risk factors that lead to on-farm inspections. The net effect of this would be to (a) focus inspections/enforcement on poor performers and (b) reward good performance with trust and a 'light touch'.

7. We propose a **better use of risk selection** when determining which claimants should be inspected. EU constraints on and barriers to risk-based inspections should be changed. At present there exists a disincentive to make effective use of risk-based selection and to apply the principles of better regulation, because Member States are obliged to increase the rate of inspection once a threshold level of breaches has been passed. We endorse Defra's argument that the European Commission should only look at the breach rate within the random (and thus probably representative) sample of inspections, rather than an already targeted (and thus unrepresentative) risk-based sample.

8. We also propose improved **use of online tools** for gathering information and completing forms. This includes providing (non-financial) incentives for farmers/land managers who make use of online facilities to complete and submit their SPS forms. We acknowledge that there will be some claimants who are unable to use these services, due to lack of broadband access or IT knowledge. However, we would urge those claimants to make use of third parties in order to obtain the benefit of the reduced error rates and the peace of mind of automatic acknowledgements for those who go online. Defra should do all it can to incentivise online form submission with a view to achieving a wholly electronic SPS system.

10. Whilst encouraging **more use of remote sensing** as a replacement for physical inspections on-farm where possible when determining land eligibility, the Task Force proposes that the UK continue to only go to the **minimum level of digitisation accuracy** imposed by the European Commission. The Task Force may wish to comment further on what should constitute an appropriate minimum level of accuracy, but in the meantime believe that the UK should continue to push back should the Commission request a higher level.

9. The Task Force believes that **regulators should only collect the minimum amount of data necessary** in order to fulfil SPS requirements. Indeed, Defra should aim to move as close as possible to a system where farmers validate existing data held by regulators, leaving farmers only to submit new information.

Recommendations specific to the Single Payment Scheme

11. In relation to the Single Payment Scheme, and in line with its principles, the Task Force makes the following suggestions:

- a) There should be a single map for SPS and Agri-environment schemes. This principle should be continued for any future forms of payment in the post-2013 CAP. We should also aim to reduce the administrative burden for claimants by pre-population of land eligibility forms. This could be more effectively implemented using Whole Farm Approach/Farming Online as the maps used for the different schemes would have the same basis and could be easily amended online. Underlying this we commend that the administration of any CAP scheme should be organised in a single place (most likely RPA).
- b) There should be differentiation between those actively managing land and others (non-farming occupiers and owners) in terms of receiving SPS. To achieve this, the Task Force proposes two eligibility tests. First, the SPS should only be available to those actively farming land. Second, Member States should be given the flexibility to introduce a minimum size of holding below which the SPS is not payable: in England, we recommend 5 hectares of *actively managed* land as the minimum.
- c) Entitlements should be abolished: they are burdensome to transfer and sometimes prevent those who actually farm the land and contribute to public-good outcomes (e.g. tenant farmers and new entrants) from claiming financial support. Now that we have a regional system, payments should be made on the basis of land claimed per annum. The total budget would then be divided by the hectares claimed to arrive at the £/hectare payment. Consideration needs to be given as to how to ensure this remains WTO Green Box-compatible.
- d) To simplify calculating land eligibility for the SPS, the claim should be made on all land inside an outer boundary including hedges and ditches but excluding hard surfaces and woods. However, before this approach can be effective, Defra should ensure that the Rural Land Registry (RLR) has accurate mapping data of internal features such as hedges.
- e) The process of claiming SPS should be changed to a pre-populated declaration sent by the RPA to the claimant, with the details of the land that RPA believes is eligible/ought to be claimed. If the information is correct, the claimant should simply sign and return the declaration, and receive payment. For this approach to work, farmers would need to notify the RLR of any changes to their holdings in real time *throughout* the year, rather than the current fixed-date approach. This would ease the administrative burden for the RLR and would prevent the build up of requests as claimants give details of boundary changes as they send in their SPS form. For amendments that result from changes in ownership, the onus should be on the acquirer to notify the land has changed hands, with the signature of the vendor.
- f) The system of crop codes should be disbanded or reduced as far as possible to those which are essential to validate the claim or ELS claims. The data may well be useful *for other purposes*, but there are ways of collecting it that do not need to be brigaded with SPS applications.
- g) To simplify the process for commoners claiming the SPS, there should be a single payment made to the appropriate Commoners Association or organisation, which can then be divided as members believe appropriate. However, payments should be made available only to active commoners, with landlords being able to claim any structural surplus.
- h) There should not be a cap on individual business claims. This goes against the principles of driving competitiveness and simplicity. Indeed, large agricultural businesses with multiple holdings should be able to claim per holding in order to ensure that any penalties for non-compliance remain proportionate.
- i) Single Business Identifiers should replace the various current convoluted systems of holding identifiers. We are aware that Government has looked into (and dismissed) this approach previously, but still believe it constitutes a clear simplification 'win'.

Recommendations specific to cross-compliance

12. We believe it imperative that public goods continue to be delivered as a condition of receiving funds from the Single Payment Scheme. Against this background, the Task Force makes the following overarching suggestions, in addition to the specific recommendations in paragraphs 16-18:

- a) Member States should have the authority to change/remove standards that have very low underlying breach rates, but should do so only where the removal will not erode current environmental, welfare and safety outcomes.
- b) The Task Force knows and agrees that areas of long term permanent pasture are environmentally valuable. However, we question whether there is benefit in the requirement for permanent pasture of five years or more to be recorded and recommend that Defra investigate whether there is an alternative method of assessing if high quality (as opposed to all) grassland is being eroded.
- c) The long term aim should be that set-aside becomes superfluous and is replaced by a successful Campaign for the Farmed Environment. Provision should be made for the permanent removal of set-aside at a date in the future, though the reserve powers to set GAEC standards for the establishment or retention of habitats should be retained as a fallback

13. Inspections and risk-based selection

The Task Force is not yet ready to be prescriptive on what tools ought to be used to measure and assess risk. However, in the interim the Task Force believes that:

- a) We should be aiming to move to a system with one, or at most two appropriately skilled inspectorates so as to ensure efficiency and co-ordinate delivery.
- b) We should aim to use risk-assessment as a means of identifying when to inspect or not and thus encourage farmers to be excellent in delivering cross-compliance outcomes, and conversely penalise and disincentivise poor performers.
- c) Defra should review EU-agreed current risk-selection factors. In accordance with its view that earned recognition should be a key element in regulators' risk-assessment process, the Task Force suggests that membership of appropriate private-sector assurance and other accredited schemes should form a key risk factor in cross-compliance inspections. In order for this to be effective, Government regulators will need to engage with these schemes to ensure that their coverage of cross-compliance standards is comprehensive and that inspection results are made available to regulators so that the latter can use as a basis for determining whether to inspect/inspection frequency.
- d) Other tools, such as the use of 1-1 advice services, professional advisors and Farming Online might also be considered as part of the risk selection process.
- e) In conducting inspections, sampling should be permitted. Only when there is a significant breach should a full inspection ensue.

14. Enforcement

The system enforcing cross-compliance should be made more proportionate (both ways) to impact on desired outcome. This can be achieved in a number of ways, including:

- a) Allowing greater flexibility in the application (or non-application) of financial reduction where the farmer's ability to control the breach is questionable (e.g. livestock electronic identification [EID]) or where a breach is negligible.
- b) Retaining tough and imposing stiff penalties for significant or repeated breaches which are damaging to outcomes.

- c) Allowing alternatives to automatic financial penalties (e.g. a greater use of advice, “yellow card” warnings, briefings or guidance on how to comply with the requirements).
- d) Removing the statutory obligation on Government to follow up warning letters with inspections and validation on all occasions, as sometimes it is not necessary.

15. Guidance

- a) The current written guidance sent to farmers annually is both extremely lengthy and detailed and is a turn off to many farmers, making compliance difficult. The Task Force suggest that this guidance should be focused around a short, outcome-based “summary note” giving clear advice on the requirements which Defra believes are the most important, including those with the most breaches the previous year: such a targeted approach would indicate where farmers need to strive for excellence and where regulators are likely to focus effort.
- b) The Task Force may have further thoughts on advice provision. However, in the interim, we believe that any future Farm Advice System might aim to have:
 - Better provision for joined-up advice;
 - Increased targeting of advice, particularly focusing on chronic cases of failure; and
 - Flexibility to work differently in different areas depending on the needs and contribution of local partners.

Recommendations specific to GAECs and SMRs

16. The following recommendations are focused on alleviating the burden of unnecessary process on farmers and Government and should be taken forward where it can be shown that this is unlikely to compromise environmental outcomes.

17. Good Agricultural and Environmental Condition requirements (GAECs)

- a) For GAEC 1, we should retain the Soil Protection Review, but we wish to focus regulator and farmer effort on breaches of outcomes, rather than breaches of paperwork. In order to make this regulation more outcome-focused, we propose introducing a duty of care accompanied by clear guidelines for the claimant to protect the soil and prevent erosion and damage to landscape features. In doing so, we would change the emphasis of the regulation and Review so that a breach would occur if an inspector found that the claimant had engaged in activity that had damaged the soil, rather than not having fully completed the Soil Protection Review. Consideration should also be given as to how to ingrain Soil Protection in other aspects of farming guidance.
- b) To reduce the burden of regulation, we propose removing the GAECs 11 (control of weeds) and 18 (water abstraction) completely as they have negligible breach rates and are covered by alternative regulations.
- c) In order to simplify regulations and reduce the number of individual requirements, the Task Force proposes that three pairs of GAECs be merged to each form a single requirement; this will increase efficiency and clarity without impacting on outcomes:
 - GAEC 6 (SSSIs) and 7 (scheduled monuments) should be merged into a single requirement.
 - GAEC 14 (protection of hedgerows and watercourses) and 15 (hedgerows) should be merged into a single requirement. Within this, a duty of care should be introduced to not pollute watercourses.
 - GAEC 16 (felling of trees) and 17 (Tree Preservation Orders) merged into a single requirement.
- d) The Task Force would also wish to see GAEC standards 5-10 and 13-17 carefully reviewed (not removed) to ensure that they are properly focused on outcomes as a

demonstration of a farmer's duty of care, rather than unnecessary process (which risks becoming a tick-box exercise).

18. Statutory Management Requirements (SMRs)

The Task Force has three specific interim proposals related to SMRs. The Task Force proposes:

- a) removing SMRs 3 (sewage sludge), 9 (plant protection products) and 10 (hormones).
- b) merging SMRs 13 (foot and mouth disease), 14 (swine vesicular disease and certain other diseases) and 15 (bluetongue) into a single SMR "notifiable diseases".
- c) merging SMRs 16 (welfare of calves), 17 (welfare of pigs) and 18 (welfare of farm animals) into a single SMR "welfare of farmed animals".

Due to our anxiety to get a view to you by early December, these recommendations are out of necessity preliminary, and in some cases are only lightly tested. However, I commend them to you and would especially recommend that Defra's approach in CAP negotiations needs, at all times, to be driven by the principles of: simplicity, achieving high environmental, welfare and other standard by focusing on outcomes, enabling competitiveness through driving out unnecessary process and by constantly posing the question – "do we really need to do this?"

We are happy to respond to any queries you may have, now or in the months ahead, and we will report fully in our public report in April.

Yours sincerely,



Richard Macdonald

Letter 4: Independent regulatory review

TASK FORCE ON FARMING REGULATION

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7th December 2010

To Jim Paice, Minister of State for Agriculture and Food

Dear Minister,

Re: Independent Regulatory Review

1. I understand that Defra officials will shortly be putting proposals to you and your Ministerial colleagues about the way in which Defra and its delivery partners engage with industry and other stakeholders on better regulation matters generally. This is something that the Task Force also intends to cover in its final report. To keep timing in line I am writing with some thoughts endorsed by the Task Force that we feel bear consideration. If you are content, we will return to them in our report, possibly with a comment on the progress of their implementation.

2. We feel that periodic independent regulatory review is a key principle. To that end, we recommend (post Task Force) the establishment of a senior panel or board within Defra to have oversight of better regulation matters and that the group should:

- include at least one, and up to three, independent members, with appropriate breadth of experience and status to contribute fully, but who do not represent any specific sector or group,
- monitor continuously Defra's adherence to better regulation principles and have a strategic overview of the regulatory forward look, and
- steer Defra's engagement on regulation issues with industry and other interests and act as a point of reference where business feels that standards are not being met.

3. At this stage I do not want to suggest in detail how a group might operate: its terms of reference and scope should probably be matters for you and your colleagues. But if such a group holds the department to best regulation principles, it should obviate the need for future regulation task forces or reviews, other than those that are focussed on specific policy issues, and make best use of the time of business representation and officials.

4. I would like to offer a couple of personal reflections on previous Defra regulatory challenge initiatives, that the recommendations above are intended to address. The previous administration's Ministerial Challenge Panel on Regulation, of which I was for a time a member, was initially well received but lost support. There was a strong feeling of "us and them" rather than genuine "enquiry and challenge" and the industry side of the table did not

feel that its discussion would affect policy development. Indeed Ministers would be briefed beforehand on how to rebut any regulatory challenge. As a result the Panel delivered very little. A continuous independent and strategic input at the centre would provide a challenge that would give assurance to industry and other stakeholders and provide you with a reference point

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Richard Macdonald', written in a cursive style.

Richard Macdonald

Annex 3 Overlap between the current cross-compliance and some other inspection regimes with checks made under assurance schemes

On-farm visits

As an indication of overlap and potential to adopt earned recognition, we set out below visits that a farmer might receive for checks in relation to the Single Payment Scheme and their relationship with two third party assurance schemes – Assured Food Standards (Red Tractor) and Leaf Marque. Other assurance schemes may also cover some of these elements. Statutory Management Requirements (SMRs) and Good Agricultural & Environmental Conditions (GAECs) are the verifiable standards that must be included in cross-compliance inspection of claimants for the Single Payment Scheme (SPS).

Inspection	Inspection covers	Assurance coverage
Single Payment Scheme Land Eligibility Assessment (Rural Payments Agency)	To check that the required number of farmers are meeting the SPS eligibility requirements. 5.0% of claimants are checked, majority by remote sensing e.g. satellite pictures (20% of 5.0% will receive a physical inspection).	Not covered by assurance scheme
Cross-compliance Inspection (Rural Payments Agency)	SMR 1: wild birds SMR 5: habitats and species SMR 6: pig identification & registration SMR 9: plant protection products SMR 11: food and feed law SMR 12: TSEs GAEC 1 – Soil Protection Review GAEC 5 – Environmental Impact Assessments GAEC 6 – Sites of Special Scientific Interest GAEC 7 – Scheduled monuments GAEC 8 – Public rights of way GAEC 9 – Overgrazing and unsuitable supplementary feeding methods GAEC 10 – Heather and grass burning GAEC 11 – Control of weeds	All requirements are covered (at least in part) by third party assurance audits. SMR 1: Leaf Marque SMR 5: Leaf Marque, Red Tractor (partially) SMR 6: Red Tractor (all elements) SMR 9: Leaf Marque, Red Tractor SMR 11: Red Tractor SMR 12: Red Tractor (partially) GAEC 1: Leaf Marque, Red Tractor (main elements) GAEC 5: Leaf Marque, Red Tractor GAEC 6: Leaf Marque, Red Tractor (partially) GAEC 7: Leaf Marque GAEC 8: Leaf Marque GAEC 9: Leaf Marque, Red Tractor (partially) GAEC 10: Leaf Marque

	<p>GAEC 12 – Agricultural land which is not in agricultural production GAEC 13 – Stone walls GAEC 14 – Protection of hedgerows and watercourses GAEC 15 – Hedgerows GAEC 16 – Felling of trees GAEC 17 – Tree Preservation Orders</p> <p>EU legislation requires a physical on farm inspection.</p>	<p>GAEC 11: Leaf Marque, Red Tractor (partially) GAEC 12: Leaf Marque GAEC 13: Leaf Marque GAEC 14: Leaf Marque, Red Tractor (partially) GAEC 15: Leaf Marque GAEC 16: Leaf Marque GAEC 17: Leaf Marque</p>
<p>Cross-compliance Inspection (Animal Health & Veterinary Laboratories Agency)</p>	<p>SMR 13: foot and mouth disease SMR 14: swine vesicular disease and other diseases SMR 15: bluetongue SMR 16: calf welfare SMR 17: pig welfare SMR 18: farm animal welfare SMR10: hormone restriction AHVLA can also take samples where use is suspected which is passed to VMD for testing.</p> <p>EU legislation requires a physical on farm inspection.</p>	<p>SMR 13, 14 & 15 : Red Tractor (covers bio-security and movements) SMR 16: Red Tractor (all elements) SMR 17: Red Tractor (all elements except noise levels) SMR 18: Red Tractor (majority of requirements)</p> <p>SMR 10: not covered by assurance scheme</p>
<p>Cross-compliance Inspection (Environment Agency)</p>	<p>SMR 2: groundwater SMR 3: sewage sludge SMR 4: nitrate vulnerable zones</p> <p>GAEC 18: water abstraction</p> <p>Also check for compliance with silage, slurry and Agricultural Fuel Regulations</p> <p>EU legislation requires a physical on farm inspection.</p>	<p>SMR 2: Leaf Marque, Red Tractor (partially) SMR 3: Leaf Marque, Red Tractor (majority of requirements). SMR 4: Leaf Marque, Red Tractor (many of requirements)</p> <p>GAEC 18: Leaf Marque</p>
<p>Sheep and Goat Inspection (Rural Payments Agency)</p>	<p>Sheep and Goat inspection programme SMR 8: sheep identification and registration</p> <p>The EU regulation sets the minimum levels: 3.0% of registered holdings (covering 5.0% of animals) randomly selected within a risk analysis. The cross-compliance sample also provides the 3.0% sample under this regime</p> <p>EU legislation requires a physical on farm inspection.</p>	<p>Not covered by assurance scheme</p>
<p>Cattle ID Inspection (Rural Payments Agency)</p>	<p>Cattle ID inspection SMR 7: cattle identification and registration</p> <p>The EU regulation sets the minimum levels: 5.0% of registered keepers; around 20%</p>	<p>Not covered by assurance scheme</p>

	<p>randomly selected within a risk analysis. The cross check sample does not meet the full requirement of the 5.0% sample under this regime and some additional farms are visited. EU legislation requires a physical on farm inspection</p>	
<p>Local Authority (Trading Standards Officer)</p>	<p>Integrated inspection that may include cattle, sheep/goats and pig movements, livestock ID and standstill controls, animal welfare, feed, waste food, animal by-products, blue tongue virus, animal medicine records, petroleum, transport, vehicle cleaning, disinfection and construction.</p>	<p>See above</p>

Annex 4 List of paperwork

This list was compiled by a typical large horticultural business.

Name of Form/record	Time to fill in form/record	Frequency
Minutes of board meetings	2 hours +	3 monthly
Vehicle tax record	3 mins/vehicle	Monthly
Office for National Statistics-Quarterly survey of Capital Expenditure	30 mins	3 monthly
PO levy administration	10 hours/per transaction	As required
Corporation Tax Administration	30 mins	Annually
Annual return	15 mins	Annually
P11D	1 hour	annually
VAT return	15 mins	monthly
CT61 forms	30 mins	Half yearly
PAYE and NI payments	30 mins	Monthly
Specific PAYE issues	30 mins	As required
Business Plan	30 hours	Annually
List of Policies	25 mins	Annually
WRS forms	3 min per person	Annually
SAWS records	30 mins per person	Annually
H&S Risk Assessments	10 mins per person per RA	Annually/as required
H&S Safe Working Practices	15 mins per person per SWP	Annually/as required
Minutes of H&S committee meetings	30 mins	Monthly
Contractors check	2-3 mins per contractor	Annually/as required
HACCPs		
HACCP verification questionnaire	15 mins	Annually
HACCP Team	15 mins	Annually
Packhouse HACCP Flow diagram	15 mins	Annually
Packhouse HACCP Plan	15 mins	Annually
Safety HACCP – Central Hazard Risk Assessment – Packhouse	15 mins	Annually
Safety HACCP – CPP Decision Process	15 mins	Annually
Field HACCP Plan	15 mins	Annually
Safety HACCP – Central Hazard Risk Assessment	15 mins	Annually
Process Flow Diagram	15 mins	Annually
Safety HACCP Decision Process	15 mins	Annually
COSHH assessments	10 hours to review, 30 mins per person to read and sign	Annually
CPD Training records	10 mins per person	As required
Induction Training records	30 mins per person	Annually/as required
Appraisal records	30 mins per person	Annually/biannually
Accident book	10 mins	As required

Name of Form/record	Time to fill in form/record	Frequency
HLF self-certified sickness forms	2 mins per person	As required
HLF holiday request forms	2 mins per person	As required
Local community relations register	25 mins	As required
GLA registration checks	1 hour	As required
HDC annual return	30 mins	Annually
Defra June Survey	1 hour	Annually
Defra Horticultural labour census	1 hour	Annually
Defra glasshouse crops census	1 hour	Annually
Working Time Directive records	15 mins per person	As required
Minimum wage summary records	1 hour	Daily
National Insurance numbers	5-15 mins per person	As required
P45 Leavers details	3 mins per person	As required
P43 Enquiry for leavers	3 mins per person	As required
P44 Enquiry for new employee details	15 mins per person	As required
P46 Online details	3 mins per person	As required
DWP Jobseekers Allowance forms	15 mins per person	As required
Office for National Statistics – Specific Individual Hours and Earnings Survey	5 mins per person	As required
Office for National Statistics – Hours and Earnings Survey	20 mins	Annually
Year End P35, P14 for online submission to Inland Revenue	4 hours	Annually
Year End P60	4 hours	Annually
Machinery maintenance records	1 hour/vehicle x 15	Annually
Mileage records	5 mins/refill	As required
Sprayer Calibration records	Up to 1 hour	3 times/year
Fertiliser Application Calibration Records	Up to 1 hour	2 times/year
Single Payment Scheme Application Form SP5	30 hours	annually
Changes to Rural Land Register RLE 1	5 hours	As required
Soil Protection Review	10 hours	annually
EA daily water abstraction records		Daily meter recording
EA water abstraction annual return for trickle/drip irrigation	4 hours	annually
Agricultural waste exemption form	10 mins	Annually
Waste disposal tickets for landfill	5 mins per load	As required
Waste recycling tickets	5 mins per load	As required
LERAP assessments	5 mins	As required
Pesticide application records (spray tickets)	20 mins	As required
Harvest Interval records	20 mins	Daily through season
Chemical stock take	2 hours	Every 3 months
Fertiliser stock take	2 hours	Every 3 months
Fertiliser application tickets	15 mins	As required
Chemical container disposal records	4 hours	Twice yearly
Water Management Plan	5 hours	2 x year
Soil & Nutrient Management Plan	5 hours	2 x year
Waste Management Plan	5 hours	2 x year
Energy Efficiency and Carbon reduction plan	10 hours	2 x year
Biodiversity Management Plan	20 hours	2 x year

Name of Form/record	Time to fill in form/record	Frequency
Crop Protection Management Plan	10 hours	2 x year
Pollution Prevention Plan	1 hour	2 x year
Fertiliser Security Plan	1 hour	2 x year
Emergency Action Plan	30 mins	2 x year
Nuisance Management Plan	30 mins	2 x year
Entry Level Scheme Application and records	60 hours	Annually
Wildlife Monitoring Records	Varies	Weekly
Campaign for Farmed Environment farm record	5 hours	Annually
PPE issuing record	5 mins/issue	As required
Crossing records with cropped areas	50 hours	At least twice yearly
LEAF Audit	15 hours	Annually
Glasshouse glass repair records	15 mins	As required
Sprayer washings disposal records	10 mins	As required
Scale calibration records	10 mins	Daily
Vehicle and machinery maintenance logs	10 mins	As required
Vehicle MOTs	Varies	As required
Diesel usage	5 mins	Daily
NSTS and SST checks	10 mins	As required
New site inspection plan	30 mins	As required
EC and pH tool calibration records	10 mins	As required
Office for National Statistics – cereal survey	15 mins	As required
Smoke alarm check records	1 hour	Weekly
Fire drill completion record	10 mins	Annually
PAT testing records	5 mins/item	As required
Toilet cleaning log	5 mins/toilet area	5 times/day
Gas safety records	3 hours	Weekly
Fire extinguisher audit form	1 day	3 x year
Electrical safety audit form	1 day	2 x year
Accommodation inspection form	2 hours	Weekly
Leavers questionnaire	10 mins per person	Annually
Pre-employment medical screening questionnaire	10 mins	Annually
Induction training procedure	10 mins	Annually
Picking staff training procedure	10 mins	Annually
Field staff hygiene requirements letter	10 mins	Annually
Training matrix form	5 mins	Annually
Procedural training form	5 mins	Annually
Fitness for return-to-work form	5 mins	As required
Issue of metal detectable blue plasters record form	5 mins	Annually
Issue/return of scissors/knives form	1 min	Daily
Primary packaging usage form	5 mins	Every delivery
Harvest interval check form	5 mins	Daily
Toilets cleaning log	2 mins	Daily
Daily harvest record	30 mins/group	Daily
Packaging stock form	3 mins	Daily
Radio log	1 min	daily
Handset log	1 min	Daily

Name of Form/record	Time to fill in form/record	Frequency
First Aid check	15 mins	Monthly
Drivers time sheet	5 mins	Daily
Quality and food safety policy statement	5 mins	annually
Nut policy statement	5 mins	Annually
Annual PO member pre-season packhouse audit report	1 hour	annually
Packhouse visit report	1 hour	Twice per year
Procedural training form	10 mins	annually
Induction training procedure	10 mins	annually
Packer training procedure	10 mins	annually
QC systems training procedure	10 mins	annually
Training matrix form	5 mins	annually
Packhouse staff hygiene requirements	10 mins	annually
Pre-employment medical screening	10 mins	annually
Visitors hygiene policy	5 mins	Annually
Contractors policy	5 mins	Annually
Visitors and contractors medical screening questionnaire	5 mins	As required
Packaging intake form	5 mins	weekly
Intake quality control form	10 mins	daily
Intake store to Packing line/packing line to despatch quality report	10 mins	daily
On-line packed product quality control form (Average weight)	30 mins	daily
Shelf life analysis form	5 mins	daily
Product positive release form	5 mins	daily
Vehicle inspection check form	5 mins	daily
Procedural accountability log	15 mins	Annually
Weekly temperature prove and refractometer calibration form	15 mins	Weekly
Weekly site hygiene audit	20 mins	Weekly
Daily coldstore check form	5 mins	daily
Daily scale check form	10 mins	Daily
Product label production check Form	5 mins	Daily
Tray end and flash label production check form	5 mins	daily
Additional roll label production check form	5 mins	Daily
Online product label production check form	5 mins	Daily
Daily glass, brittle & hard plastics, ceramics and other similar materials inspections form	10 mins	Daily
Metal detector check form	5 mins	daily
Checkweigher calibration form	5 mins	Daily
Cleaning log	10 mins	Daily
Toilet cleaning log	5 mins	Daily
Packhouse cleaning schedule	15 mins	Annually
Protective clothing cleaning log	10 mins	Weekly
First aid check form	10 mins	Monthly
Issue of metal detectable blue plasters	5 mins	As required

Name of Form/record	Time to fill in form/record	Frequency
form		
Issue/return of blades/scissors/knives form	5 mins	As required
Glove issue form	10 mins	As required
Glass/hard plastic/brittle material incident log	10 mins	As required
Packhouse machinery maintenance form	15 mins	Daily
Customer complaint and rejection investigation report	10 mins	As required
Primary packaging usage form	5 mins	Daily
Cleaning training procedure	15 mins	Annually
Annual allergen undertaking	5 mins	Annually
Supplier approval list	20 mins	Annually
Annual GM undertaking	5 mins	Annually
Packhouse machinery maintenance sign off form	10 mins	Annually
Fire alarm log	5 mins/site	Weekly
Fire drill Log	5 mins/site	Every 6 months
Cost analysis	15 mins	Daily
Packhouse stock and dispatch sheet	15 mins	Daily
Farm gate sale log	15 mins	Weekly
Packhouse kilos log	20 mins	Weekly
Packhouse timesheet	15 mins	Daily
Packaging order form	5 mins	
Supermarket crates order form	5 mins x 5	Weekly
Label store order form	15 mins	Weekly
Packaging stock sheet	1 hour	Weekly
Daily stock sheet	Up to 30 mins	daily
Energy audit report	2 days	Annually
Plant quality assessment form	1 hour	
Packaging requirements	5 hours	annually
Packaging delivery plan	3 hours	annually