

VISION FOR THE FUTURE OF FARMING



A REGULATORY REGIME THAT'S FIT FOR PURPOSE

Delivering for farmers and for the public

INTRODUCTION

Of all the issues that the NFU has identified as policy priorities during the Brexit process – labour, trade, agricultural policy and regulation – it is perhaps the last of these, regulation, that is the most complex and nuanced. It cuts across all three of the other areas and can impact on each of them in interrelated ways – for example, our compliance with EU regulations and the CAP has been fundamental to our participation in the Single Market and trade with the rest of Europe, but it has sometimes meant burdensome requirements and red-tape with little obvious benefit.

Farmers recognise that regulation is a part of farming as it is of any other business – and with agriculture having such a direct relationship with the natural environment and with the food we eat, it is perhaps understandable that regulation should be particularly evident in our industry, aimed at ensuring a safe supply of food and protecting our wildlife and countryside. Nevertheless, farmers take their responsibilities in these matters extremely seriously, and much can be achieved through voluntary action and non-regulatory approaches. Where regulation is appropriate, it must be proportionate, evidence-based and as light-touch as possible.

Brexit presents important opportunities with regard to regulation. Regulation was the subject of much debate in the run up to the EU referendum of June 2016, and the frustration of many farmers with rules seen as originating from the EU was clear. There is now an opportunity to develop better regulation once we are no longer governed by EU law, properly designed and implemented to achieve its aims while allowing farmers to continue to do what they do best – provide a safe and affordable supply of British food. But we must also acknowledge the challenges of Brexit. In particular we need to ensure our regulations do not diverge from those of our key future trading partners in a way that makes free trade impossible.

It is clear that a fine balance between regulatory reform and regulatory stability is needed. In this, the fourth of our Vision for the Future of Farming reports, we set out how this can be done. We highlight some of the key issues that lawmakers need to consider in devising regulation. We look at some of the current regulations that impact farming, where they are well designed and achieve their aims, and where they don't. And we set out our expectations of government as it sets about transferring EU law to the UK ahead of Brexit, and begins to establish a new regulatory system that is fit for farming's future.

HOW DOES REGULATION IMPACT FARMING?

Regulation is greatly intertwined with modern day-to-day farming. Legislation, as a government tool employed in controlling, directing, or managing an activity, is used across the economy to protect the environment, human and animal health, and consumers' economic interests. Farming and food production have a potential bearing on all of these aspects and are therefore subject to rules that protect the public interest.

Good regulation promotes the fundamental value of an economic activity by setting enabling rules while applying appropriate controls on that activity so that the risk of harm, economic or otherwise, is minimised. While an absence of regulation might lead to a failure to control risky behaviour, poorly drafted or implemented regulation can lead to burdens on business that are disproportionate to the benefit derived. Such rules may restrict businesses from undertaking activities that are valuable to society, create perverse impacts, or fail to provide the protections intended.

For UK farming, much regulation is derived from our status as an EU Member State. Agricultural policy, and more recently other aspects of environmental and commercial policy, are key areas of competence for the EU. Through directly effective EU regulations, domestic legislation that implements EU directives and other aspects of EU law, agriculture has probably been more exposed to EU law-making over the past four decades than any other sector of the economy.

Our withdrawal from the EU provides an opportunity to review much of that regulation, and to devise a regulatory regime that is fit for purpose, to effectively support productive agriculture and trade in agri-food products with overseas markets, while protecting the environment, businesses and the public.

Given the extent that regulation influences farm practice, it is not surprising that farmers have had their fair experience of bad regulation and the NFU has therefore long campaigned for reform. This does not reflect an opposition to regulation per se, but rather a desire to see the details of design and implementation improved.

Many potential issues are a result of poor design or implementation, rather than any inherent failure in the identification of an issue requiring a regulatory solution. The table overleaf contains a number of specific EU-derived regulations, which have led to varying outcomes for farmers as a result of their design. While by no means exhaustive, it provides an initial overview of positive examples where rules are generally working well and should be retained and other, less positive areas, where a minor or major review resulting in a better approach would be beneficial to the sector.

The Department for the Environment, Food and Rural Affairs (Defra) estimates that approximately 1,200 EU laws, a quarter of the total, relate to its remit. Not all of these apply to farming, but EU laws dealt with by other government departments also have a bearing on farm businesses. Achieving the best regulatory outcome from Brexit is therefore not the sole concern of Defra, but across Whitehall. Quite simply a vast variety of farming activity is touched by regulation.

ENERGY TAX DIRECTIVE
(EC 2003/96)

RENEWABLE ENERGY DIRECTIVE
(EC 2009/28)

HABITATS DIRECTIVE
(EEC 92/43)

BIRDS DIRECTIVE
(EC 2009/147)

MAXIMUM LEVELS FOR CERTAIN CONTAMINANTS IN FOOD
(EC 1881/2006)

REGULATION ON PLANT PROTECTION PRODUCTS
(EU 1107/2009)

VAT DIRECTIVE
(EC 2006/112)

MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE
(EU 2014/65)

NITRATES DIRECTIVE
(EEC 91/676)

DRINKING WATER DIRECTIVE
(EC 98/83)

WORKING TIME DIRECTIVE
(EC 2003/88)

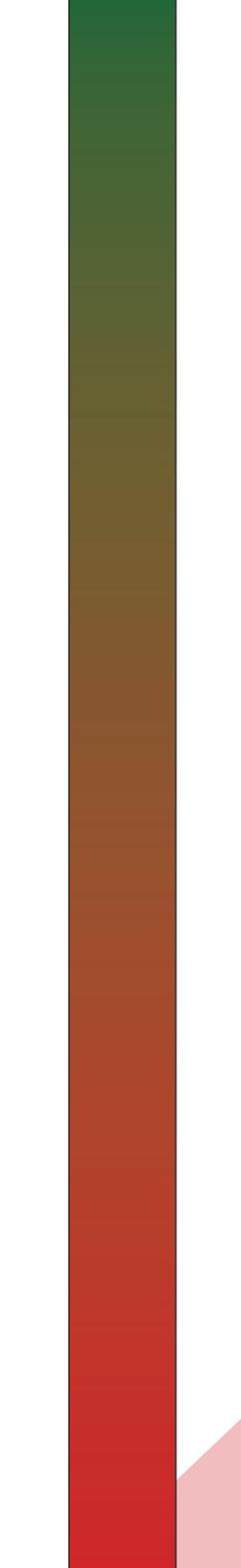
DRIVER CERTIFICATE OF PROFESSIONAL COMPETENCE
(EC 2003/59)

IDENTIFICATION AND REGISTRATION OF OVINE AND CAPRINE ANIMALS
(EC 21/2004)



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| PLANT VARIETY RIGHTS (EC 2100/94) | <p>The plant variety rights system provides rules for how plant material is used for breeding purposes and defines what material can be protected by breeders for their exclusive use and sale. It allows for farmers to keep seed from harvested crops to replant in following years by laying down a system of royalty payments to breeders. This system is on the whole straightforward and does not result in excessive cost. The regulation keeps genetic material freely available to all size of breeding businesses, promoting innovation and aiding the diversity of seed supply.</p> |
| SUSTAINABLE USE OF PESTICIDES (EC 2009/128) | <p>This requires operators to be suitably trained and equipped to apply pesticides and mandates that equipment be regularly maintained and tested. It also promotes existing good farming practice already seen in the UK, where alternatives to chemical pest control are increasingly implemented (Integrated Pest Management). Producers meet the cost of training and inspections, but participation is recognised in quality assurance schemes.</p> |
| ANIMAL HEALTH LAW (EU 2016/429) | <p>New regulation soon to come into force in the EU will establish a single regulatory framework for animal health which integrates, streamlines and simplifies the existing legislation. Intended as a framework the regulation itself only lays down general principles and basic rules, allowing appropriate flexibility in ensuring farmers comply to some of the highest welfare standards in the world.</p> |
| FOOD INFORMATION TO CONSUMERS (EU 1169/2011) | <p>This regulation applies to food business operators at all stages of the food chain, where their activities require the provision of food information to consumers. Operators must provide a variety of information on fresh, chilled and frozen meat from pigs, sheep, goats and poultry. This includes information on allergens, country of origin and nutrition. However, specifically regarding country of origin, the rules do not stipulate that an animal product must describe where the animal was born, which misses an opportunity to provide greater transparency and confidence to consumers and the provenance of the farm to be clear.</p> |
| ELECTRONIC IDENTIFICATION OF LIVESTOCK (EC 21/2004) | <p>These rules provide for traceability of livestock in the supply chain by mandating the use of electronic identification (chiefly ear tags) for livestock. However, elements of the UK implementation are an issue and provide a good example of gold-plating. Specifically, the UK requires that readings of sheep electronic tags are 100% correct, which is very hard to achieve with the technology and moreover misreads may be outside of the farmer's control. Other EU Member States operate a system of tolerances for individual reads, for example France has a tolerance level of 90%. As breaches of tolerances result in penalties, this clearly disadvantages UK producers.</p> |
| NITRATES DIRECTIVE (EEC 91/676) | <p>This was introduced with the aim of reducing nitrates from agriculture in ground- and surface water. It designates areas of the country where on farm action is required. However, in some cases areas are designated where nitrate pollution is from several, non-agricultural sources and small improvements in farming upstream would have no measurable impact upon the downstream monitoring point, making designation of the area highly questionable. Prescriptive rules on the steps farmers should take in tackling nitrate pollution are out of line with farm practice and actual conditions, which also does not result in the optimum environmental solution.</p> |
| REGULATION OF PLANT PROTECTION PRODUCTS (EC 1107/2009) | <p>This provides the process for which plant protection products, and the active ingredient used to achieve the pesticidal action, are approved for use. Its core objectives include ensuring a high level of protection for human and animal health and the environment, as well as safeguarding the competitiveness of EU agriculture and improving production. It is however largely hazard-based in approach, meaning that the actual risk of harm posed by products is not properly assessed, despite possible safe use with appropriate risk mitigation. In practice this means that farmers are faced with a decreasing pest-control toolbox, damaging their competitiveness.</p> |
| CROP DIVERSIFICATION (ARTICLE 44 OF EU 1307/2013) | <p>The crop diversification measure stipulates that farmers claiming direct support must grow a minimum of two crops if they have between 10 and 30 hectares of arable land, rising to three different crops if they have more than 30 hectares. However, it goes against all of the NFU core policy principles of simplicity, market orientation, and increased efficiency. Through the imposition of artificial crop rotations, it has increased costs, reduced efficiency and increased traffic on rural roads.</p> |

GENERALLY WORKING WELL



NEEDS TO BE REVIEWED

KEY ISSUES IN DESIGNING A BETTER REGULATORY ENVIRONMENT

Increasing the role of science and evidence

Policy must be firmly and consistently based on science and evidence.

The NFU strongly believes that regulation and policy decisions should be based on the most robust body of scientific evidence. Policy must be driven by the science, rather than decisions being made first and the research then commissioned to justify them. We have expressed concern in the past that some decisions, for example around agricultural technologies or disease control, have been made as a result of political pressure as opposed to weight of evidence and proper analysis. We acknowledge that ultimately Ministers will decide, but they must be able to fully justify those decisions using a full assessment of the best scientific evidence. The scientific consensus may of course shift as new research is completed, and the practical context may also change – legislation must be flexible and periodically revisited to ensure it is still fit for purpose. This is also true for the design of the rules and the way regulatory requirements are delivered and enforced on the ground. The benefits of following this approach are that the desired outcomes are achieved; unintended consequences are avoided; the public can have confidence in the regulation; and businesses have the certainty of workable, enabling rules to follow giving them confidence to invest.

Retaining a balanced Precautionary Principle

EU treaties stipulate that regulations on the environment and public health shall be based on the Precautionary Principle and its application further extends to law on food, animal and plant health. The key element of the Principle is that where there is a potential threat to the health of people, plants, animals or the environment, the cause of this threat should be restricted, even if scientific proof is uncertain. There is clear merit to this approach and the NFU is not opposed to the Principle, as long as it is applied appropriately and proportionately. The European Commission's guidance on the Principle crucially states that the potential costs and benefits of taking precautionary action, or not taking the action, should be taken into account, as well as the best available scientific evidence. The NFU is concerned that these aspects covering real-world impacts have often been side-lined in applications and interpretations of the Principle.

At times we believe the Principle has been used to justify an approach to potential harmful activity that considers only its hazard, or theoretical harm, without sufficiently weighing up the actual risk. Regulation is then designed to avoid that hazard at all costs, and overlooks the concepts of risk assessment and risk management, stifling innovation in the process. Risk assessment explores the likelihood of the hazard causing harm based on exposure levels or the way something is used. Risk management uses this understanding to mitigate the risk. By considering risk, potential benefits for business, society and environment can be realised, and harm avoided through appropriate management and regulation.

This has been a particular issue for farmers in terms of the availability of crop protection products, such as fungicides, herbicides and insecticides. The current EU regime for approving products for use has seen many vital products lost to farmers, even when they are used properly and with minimal risk to the environment or the public. Moreover, the Principle has in our view led to huge costs in bringing alternative products or technologies to market, further compounding the problem. This loss of the means to protect crops poses an enormous threat to farmers' ability to ensure sustainable yields, prices and the health of a wide array of crops.

Brexit presents the opportunity for the UK to adopt a different approach and legislate to properly define and improve the application of the Precautionary Principle. It should not be lost, but can be improved so that regulation takes greater account of risk, innovation and the costs of taking action.

A retained, balanced Precautionary Principle should encourage an innovation-friendly environment that delivers benefits for business, the environment and society.

Impact assessments should be used more extensively to ensure costs to business are properly factored into regulatory regimes.

Recognising the impact on businesses

Administrative burdens that are disproportionate to the desired outcome are damaging to productivity, tie up regulators' time in unnecessary work and discourage participation in publicly beneficial activities (e.g. EU Rural Development Schemes). The most recent figures from the National Audit Office in 2012 estimated that compliance with regulation cost the average English farm £5,500 – a tenth of the average income at the time. Furthermore, the NFU's 2016 confidence survey showed that 53% of farmers surveyed believed that regulation and legislation would have a negative effect on their businesses – the second highest area of concern. Poor regulation is characterised by approaches that have not engaged in advance with businesses to consider how regulation is best targeted or implemented.

Considering realistic farm practice

Rules should be designed in such a way that reflects how farm businesses operate in practice. Failure to do so can result in issues with compliance or unnecessary, artificial changes to farm activity. For example the Nitrates Directive introduced inflexible 'closed periods' when application of fertiliser and some manures are banned but that take no account of soil or weather conditions during or after the closed period. Instead, farmers should be encouraged to assess actual conditions and risk at any given time. Where farm practice has been taken into account, such as an exemption to hedge-cutting rules for oilseed rape growers, better results are achieved. Although even this example could be better implemented, it attempts to achieve a balance between cultivating a crop while minimising the threat to the nesting birds.

Farm practice should be fully considered and built-in as regulation is formulated and implemented to achieve best results.

Regulation should take into account the capacity of farm businesses to comply and the proportionality of penalties for non-compliance.

More proportional regulation

Compliance and enforcement are key aspects of effective regulation, but they must be proportional to the size and capacity of businesses. A majority of farm businesses are small or medium sized enterprises (SMEs), or even micro-businesses, and do not have the same level of capital or resources available to them in ensuring they comply with legal rules. This is positively reflected in new EU rules covering speculation on agricultural commodity markets, aimed at preventing large companies distorting global food prices. As farm businesses do not have the financial capital to affect markets in this way, but nevertheless access commodity markets to manage price volatility risk, the rules foresee an exemption to resource intensive financial reporting for businesses below a certain size. Proportionality is however sometimes lacking with regard to penalties for not complying with rules. For example, missing ear tags for identifying animals can lead to percentage fines applied to the entire support payment a farmer receives, even if the majority of the farm's land and activity is dedicated to arable production that fully complies with rules.

Earned Recognition

As part of a new approach to inspection and enforcement of legislation, membership of farm assurance schemes could involve the acknowledgement of good practice on farm. Earned recognition is about using membership of third party schemes to assess risk and therefore the need and frequency for the state or its agencies to inspect. The Farming Regulation Task Force, which reported to DEFRA in 2011, proposed that the principle of "earned recognition" be central to future regulatory policy making. The NFU is fully supportive of such systems that reward good practice, with verified adherence to given farm assured standards leading to less frequent statutory inspection. This helps to ensure that low risk farms are not targeted on multiple occasions, allowing regulators to focus their resources on those more likely to be non-compliant. It is an approach that has already been successfully implemented to reduce inspection burdens for both farmers and administrators in Feed and Food Hygiene inspections. There is potential to further avoid duplication in other regulatory areas covered by the Red Tractor, Lion Brand and other farm assurance standards.

Recognising farmers' successes should play a more direct role in effective, well-targeted policy.

THE CHALLENGES AND OPPORTUNITIES FOR BETTER REGULATION

Brexit provides a unique opportunity to assess the regulatory environment under which farming operates and to follow the principles for improvement put forward in this paper. However, our departure from the EU, particularly in the short time frame expected, poses significant risks. The regulatory challenge for farming will involve two distinct but closely related challenges: the preparation for Brexit involving the transfer of EU laws and regulations into the UK legal system, and the subsequent review and adaptation of the post-Brexit regulatory environment to support productive agriculture.



1. Transferring law from the EU to the UK

The main mechanism for transferring EU law into UK law will be the European Union (Withdrawal) Bill (EUWB), which intends to provide government and parliament with powers to replicate, where possible, existing EU laws so that, at the point of Brexit, individuals and organisations in the UK are subject to the same rules and regulations that existed before withdrawal.

However, a straight transfer of law will not be possible in many cases, for instances in cases where EU law refers to EU institutions or processes. The EUWB makes provision for such laws to be amended in order to ensure they remain operable post-Brexit.

In the case of complex legal entities – the Common Agricultural Policy for example – separate legislation is planned to provide new UK law. Four bills in particular will be of interest to farmers and growers: the Agriculture Bill, the Immigration Bill, the Trade Bill and the Customs Bill. Our previous three Vision Papers on domestic agricultural policy, an agricultural workforce and international trade contain our view on the direction each policy area should take for the greatest benefit to farming, the wider food industry and society as a whole.

The EUWB nonetheless remains highly important to the sector as it will replicate many regulations that have significant bearing on the operation of farm businesses. It is essential the process is as transparent as possible to allow industry to analyse changes in order for them to best understand and advise on the impact of required changes. We are urging government to share documents that indicate precisely where and how the word of law has changed as part of a clear, practical demonstration of transparency.

Proper scrutiny by both parliament and business must also be ensured. This is especially important as the Bill will mandate a large number of changes to EU law as it is transferred in order to remain operable. The Government proposes to use Statutory Instruments, which are not subject to the same rigour of scrutiny as primary legislation, as the key method of achieving modifications. The Government must therefore take clear steps to ensure that proper parliamentary scrutiny is provided for. In practice the relevant select committees could be allowed to examine proposed statutory instruments, including evidence gathering from interested parties. The process in general should also seek to exploit any opportunities that can improve the functioning of replicated legislation – while it is clear the EUWB itself is not a vehicle for substantive changes in regulations, obvious positive opportunities should be taken where possible.



2. Reviewing regulation post-Brexit

The NFU has long advocated better regulation and moreover sought to promote practical solutions for a variety of specific rules. Once we have left the EU, the Government has made it clear it intends to review regulation across a variety of areas to improve it where necessary.

The NFU believes agriculture and food production should be a priority area for this process. We urge the Government to set out its proposal and timelines for reviewing regulation in a systematic and comprehensive manner. The NFU is undertaking its own audit of regulations that impact farming, and is developing proposals on specific regulations that we believe are ripe for reform as a priority, for instance the Nitrates Directive, Plant Protection Product regulations and aspects of compliance under the Common Agricultural Policy such as greening measures.

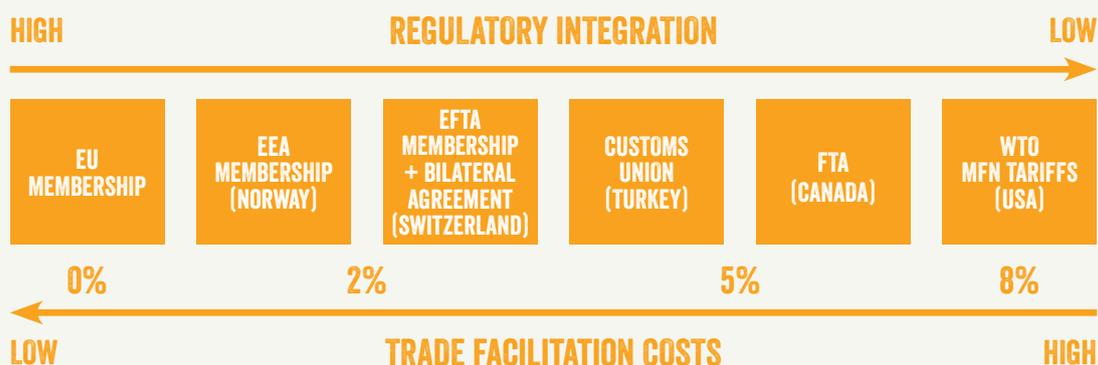
It is also important to note that the effectiveness and workability of regulatory regimes post-Brexit will rely as much on their enforcement, implementation and interpretation as the letter of the law itself. There will be a number of instances, even where existing EU law is transferred intact into UK law, in which operation of the subsequent legislation can be undertaken in a way that leads to better regulation for UK farmers. For example, under the current Plant Protection Products approvals regime, the UK could take a distinct approach to how draft guidance documents are used in assessing pesticide approvals, prior to making any changes to the regime itself, which could improve the availability of important products to farmers and growers. We urge the Government to start work now, in partnership with industry, in identifying ways of improving the functioning of existing regimes once we leave the EU.

While Brexit will shine the spotlight on EU-derived regulation, opportunities to improve purely domestic legislation should not be overlooked. For example, strengthening the powers of the UK's Groceries Code Adjudicator to tackle unfair trading practices, improving agricultural tenancy arrangements or enforcing greater transparency of the pricing of carcasses could all form part of a holistic regulatory review.



3. Ensuring balance with other priorities: trade and high standards

As a general rule, the more similar regulation is between nations, the more easily trade flows between them. This regulatory equivalence will be a key element in securing future trade deals with partners such as the EU, something the NFU has set out as a priority in our trade policy vision. The greater the regulatory divergence, the greater the trade facilitation costs incurred. This is particularly true of trading relationships between the EU and third countries.



In 2016 the UK exported £13.8bn worth of food and non-alcoholic drinks, with roughly 70% going to the EU, under a tariff-free, single regulatory regime that ensures minimum or harmonised standards throughout the bloc. Trading partners outside of the EU must ensure that the EU's standards are met and that the

regulation in place to achieve this is fit to do so, something which EU auditors monitor. If regulation on production standards changes to the extent that UK produce no longer complies with EU standards, this could lead to goods being unable to reach the EU market. Equally, if regulation is modified so costs are greater for UK farmers, this could make them less competitive on the EU market.

Beyond the EU market, regulatory equivalence must also be considered as the UK seeks to replicate existing free trade agreements we are party to as an EU Member State. Equally, the UK has the opportunity to adjust production standards, as it has done with the US/UK organic produce equivalency deal, to bring it more into line with other trading partners. This would help facilitate the movement of goods and services, although doing so may have other implications for UK agriculture, such as opening domestic markets to overseas products that do not currently have a foothold here.

Ease of trade is clearly an important consideration to take into account as we review and adjust our regulatory environment post-Brexit. However, we strongly believe that regulations can be different, yet equivalent and therefore better without jeopardising trade.

In matters of the environment and public health, British farmers comply with some of the most stringent rules in the world. While this can add cost burdens to farm businesses, it can in some cases help producers command a premium on certain markets for several commodities. Such standards also help engender consumer trust in food produced in the UK.

During the EUWB process and further down the line, changes in regulation must not unnecessarily undermine these standards. While the NFU believes that implementation of certain aspects of regulations can be designed in a better way, the environmental and public health protections that many regulations seek to achieve must not be overlooked. Not only are these protections crucial in and of themselves, they also underpin the value of British produce and the high levels of public trust in British food and farming. The clear challenge regarding both trade and production standards is one of balance with the opportunity of positive regulatory reform.



SUMMARY

- ✓ Our withdrawal from the EU provides an opportunity to **review the regulatory environment** under which farming operates, and to devise a **regulatory regime that is fit for purpose**, effectively **supporting productive agriculture and trade** in agri-food products with overseas markets, **while protecting the environment and the public**.
- ✓ The EU Withdrawal Bill process must provide as much certainty to business as quickly as possible. Therefore the Bill must be fully **transparent, properly scrutinised, include industry recommendations, avoid legal “blackholes”** and seek **improvement to legislation where possible**.
- ✓ Both immediately after Brexit and beyond, regulatory regimes implemented in the UK must ensure appropriate levels of **regulatory equivalence** with trading partners, with sufficient resources to achieve this, in order to **maximise the potential and fairness of trade** in British produce with the EU and globally.
- ✓ As regulation is amended or created, **impact assessments** must be carried out to gauge the effect on farm businesses. How regulation improves or damages the **performance of businesses in the specific rural context** should be a key indicator considered in all regulation.
- ✓ **Science and evidence** must be at the heart of policy and decision making to ensure a regulatory environment that has a long term vision to provide **stability and certainty** for farm businesses.
- ✓ **Proportionate, risk-based approaches** across the spectrum of regulation should be pursued to **encourage innovation and improve competitiveness**.
- ✓ Farm regulatory visits need to be better co-ordinated and planned across different regulatory agencies to **reduce overlapping, duplicated checks** and be overall **more proportional**. **Greater data and information sharing** between regulators and third party voluntary schemes will enable regulators to identify and **focus their efforts** on where there is greatest risk of non-compliance.
- ✓ Farmers that demonstrate they present a low risk of infringing on rules, and those that go further through voluntary schemes should have this **effort recognised** when compliance with regulation is being assessed. **Earned recognition** should therefore feature in the design and implementation of future regulation.

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