NFU Consultation Response

To: Red Tape Challenge

Date: 23 August 2013
Ref: PS13/093
Contact: Lee.osborne@nfu.org.uk

Agriculture, Animal Health and Welfare, Plant Health and Forestry

The NFU represents more than 55,000 farmer and grower members and in addition some 40,000 countryside members with an interest in the countryside and rural affairs.

The cumulative impact of administrative burdens and bureaucracy can have a negative impact on farming businesses and are seen as a major hurdle to business competitiveness, too often removing managers from focussing on their businesses. NFU members regularly report that it is an issue of great concern[1], indeed in our most recent survey regulatory pressures are regarded as a greater concern than CAP reform, Single Payment Scheme or market place conditions.

The costs of regulation can also disproportionately impact on micro-businesses. According to the National Audit Office 'Streamlining Farm Oversight' report published in December 2012 the cost of regulation represents around one-tenth of an average farms' net profit (£5600/unit) with livestock farms (often those with more frequent and duplicate visits suffering a greater proportionate impact. We strongly support the NAO's recommendation that Defra should urgently streamline farm oversight, aiming for a more efficient and less burdensome approach to regulation, with a significant reduction in costs to farm businesses as well as government.

The NFU therefore welcomes this opportunity to formally respond to the Red Tape Challenge to help create a clearer and simpler regulatory landscape. While we recognise that the purpose of the Red Tape Challenge is not to re-visit ground covered by the Farming Regulation Task Force we felt this would be a timely opportunity to reiterate priority areas from our initial submission to that review where we feel change is not being made at a quick enough pace or where progress has stalled. There is a concern expressed by our members that Defra's effort has not resulted in widespread tangible reductions in regulatory burdens or compliance costs for businesses. Therefore our priority themes include:

- **Culture Change** – While we are seeing progress in this area we would still encourage Defra to take a more effective approach to achieving its aims by focusing on outcomes rather than processes and work in greater and more strategic partnership with the industry on regulatory issues from the earliest stage of legislative development
- **Inspections and earned recognition** – although various ways in which to implement earned recognition have been identified at workshops, beyond isolated examples (often established prior to the Farming Regulation Task Force reported) we are yet to see farmers who demonstrate best practice being rewarded through earned recognition (e.g. by fewer inspections or reduced costs).
- **Animal Movements –** the need to drive forward progress on a range of measures to simplify controls and to extend the use of electronic reporting of animal movements
- **Data Sharing and Paperwork** – While there are projects underway to tackle guidance and data and information obligations we need to see greater sharing of information between Defra agencies and where they exist, removing duplication information requests

[1] see NFU Confidence survey
http://www.nfuonline.com/Our-work/Economics-and-International/News/Weather-and-costs-cast-cloud-on-confidence

The following text sets out the essence of the NFU's concern about unnecessary red tape and burden imposed and focuses on areas where regulation could be improved to reduce burden on agricultural businesses. We have recently submitted a response to the business led taskforce on EU regulation and issues we have raised there would also be applicable to this reviews. We have decided not to duplicate them again here but a full response to that review is available on request.

We would be happy to provide further explanation and information wherever this would be helpful.

Common Agricultural Policy

The EU has finally reached an outline political agreement on the next Common Agricultural Policy (CAP). That agreement leaves the door wide open for member states to implement a less common, less market orientated, more complicated CAP regime in the future, This will do nothing to help British farmers compete on a more level playing field in the future. For almost every element of the new CAP, there will be flexibilities for Defra to select with regards to implementation of the future policy.

Specifically there are two policy elements of CAP implementation that cause the NFU greatest concern. Namely, the unilateral powers conferred on Defra to transfer money from pillar 1 (direct payments) to pillar 2 (rural development) and secondly, the potential for Defra to gold-plate the new environmental rules known as 'greening'. Our concerns are detailed below:

The new CAP framework gives Defra the possibility to implement an 'early warning' system in respect of non-compliance penalties (article 99 of the new control and financing regulation).

- ***The NFU believes that the use of this option will go some way to delivering a more proportionate penalty system in the future and should be implemented. More broadly we believe that Defra should implement the future inspection, cross compliance and penalty system in a way which is proportionate using a risk based approach.***

For example, seeking clarification from the Commission on what is required to reduce the number of on the spot checks, implementing the provision whereby a farmer who is able to demonstrate that he or she is not at fault for the non-compliance, should not be penalised (for example failure of equipment that reads animal identification) and elsewhere implementing the minimum percentage deductions applicable.

With regards to the implementation of the future direct payments there are a number of aspects where there is the potential for gold-plating. However this is dependent on implementation decisions that Defra are yet to take. The NFU will continue to work closely with Defra officials to implement the new rules in a way that is simple, workable and is as fair as possible.

<u>Transfers from direct payments to rural development (previously known as modulation)</u>

The EU budget 2014-2020 settlement already places UK farm payments per hectare considerably lower than our main competitors and leaves the UK facing the largest loss of all member states in terms of our rural development fund envelope. To shore up the estimated 22% cut to the UK rural development envelope, Defra has 'flexibility' to cut English farmers payment levels by up to 15% and move this money across into the rural development envelope. The rural development fund is primarily used to finance environmental undertakings and broader rural concerns. Defra has welcomed this 'flexibility' and has sought ways to maximise the actual amount of money that can be cut from English farmers payments and moved across.

The consequence of applying the cuts to the pillar 1 direct payments would be to further widen the already significant differences between Member States and within the United Kingdom in single farm payment levels. In the context of a single market excessive domestic modulation accentuates competitive advantage for farm producers from other parts of the EU and UK and leave English farmers

more vulnerable than our competitors to market volatility. In a year of exceptionally poor weather the direct payment provides an important element in the resilience of farming businesses. Other governments see the direct payment as mitigation to Europe's more stringent environmental regulations, such as those that restrict our use of plant protection products and access to other technology, such as biotechnology. Given historically low rates of reinvestment in farm businesses, the higher area payment rates our competitors receive allow them to invest in their farming operations and to enhance their long-term resilience and competitiveness.

- **We believe that it is wrong for Defra to start from the premise that the maximum amount must be transferred from pillar 1 to pillar 2. What is required is a quantifiable analysis that establishes how any transfer of monies to Pillar 2 will impact on English farmers and if transferred, how monies can remain accessible to active farmers before any rate of transfers is set.**

- **Defra has the flexibility to set the transfer rate initially to less than the maximum 15%. There would then be the option of reviewing the rate in 2017, if experience proves that to be necessary, depending on the demand for rural development measures, and the response of other member states.**

New Environmental rules known as "greening"

The CAP agreement includes within it new mandatory requirements for farmers to undertake certain actions beneficial for the environment. These new rules are known as 'greening'. Three greening measures have been agreed at the European level. In addition, Defra has successfully negotiated the right to implement some tightly defined alternatives to the three measures and to deviate from the minimum approaches to implementation.

Our starting point is that there should be no gold-plating of the new rules, a view we are pleased to note is shared by Defra Ministers. We believe that Defra's approach to greening should be in line with the guiding principles issued by BIS[1] earlier this year on the implementation of European legislation. In short, we fully support the principles of not going beyond the minimum requirements, seeking alternatives to regulation, endeavouring to ensure that UK businesses are not put at a competitive disadvantage compared with their European counterparts and undertaking future ministerial review.

In our opinion, 'no gold-plating' means that English farmers should have access to the common rules established in the Council regulation with minimal elaboration that would disadvantage domestic producers relative to our competitors. English farmers should not face more costly or burdensome conditions to unlock the 30% greening aid than farmers in other parts of the UK or across the EU. This is irrespective of whether there is a choice in the regulation for Defra to undertake alternative options or flexibilities offered. If Defra were to go beyond the minimum requirements as a fundamental condition of unlocking the 30% greening aid, we believe that this would clearly be contrary to the Government's principles for transposition.

In the context of implementing the new greening rules 'no gold-plating' specifically means to us that:

- ***Farmers should have access to the 3 European measures [2] with all of the options and exemptions offered.***

- ***Farmers with more than 75% grassland and small areas of arable (less than 30ha) should be exempted from the ecological focus area and crop diversification requirements as laid out in the agreement.***

[1] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/229763/bis-13-775-transposition-guidance-how-to-implement-european-directives-effectively-revised.pdf
[2] Article 29 1a of draft direct payments regulation

- ***Where the requirements can be fulfilled at the national level (for example relating to the permanent grassland measure), this approach should be taken to avoid unnecessary costs on individual businesses.***

- ***We expect the implementation rules associated with the ecological focus areas measure to respect the European Council declaration of the 8th February 2013:*** *"The requirement to have an ecological focus area (EFA) on each agricultural holding will be implemented in ways that do not require the land in question to be taken out of production and that avoids unjustified losses in the income of farmers".*[3]

- ***We believe that the industry voluntary initiative "The Campaign for the Farmed Environment" can increase the environmental outcome of the new rules by providing locally targeted advice.***

Animal Health Legislation

The NFU has long supported the simplification of livestock movements whilst ensuring that food safety, traceability and disease controls remain of paramount importance. We believe that better regulation of animal movements can result in a significant reduction in the amount of paper work and bureaucracy on farm.

We have now seen two published reports, the Madders Review (2006) and the Farming Regulation Task Force (2011), outlining a package of recommendations which livestock farmers broadly support. However to date very little progress has been made to improve and simplify livestock movement regulations. In light of this Government's commitment to better regulation we need to see the recommendations in these reports being driven forward with far greater urgency.

We have outlined below three areas where we believe progress could be made.

Ten mile rule

- ***The NFU want to see implementation of the ten mile rule for livestock movements, and an easy, sensible way of linking holdings where the holding number cannot be amalgamated due to SPS or tenancy reasons but the land is farmed within ten miles in the same way as if it was owned.***

This would simplify the movement regime from the present arrangement where red tape has actually increased since the Farming Regulation Task Force review, with the removal of new SOAs and CTS links. This has taken over two years and still there is no public consultation on any changes.

Six day standstill

- ***The NFU believe pragmatic changes to the six day standstill are required to reduce red tape for farmers and allow them to actively respond to the volatile market instead of preventing them marketing stock due to standstill.***

Lessons should be learnt from DARD experiences in Northern Ireland where isolation facilities (as proposed by Defra as an alternative to whole farm standstill) have been in place since 2004 but have not had widespread take up. Defra's proposals would allow for flexibility but would increase red tape and so would put off farmers applying for such flexibility. As a consequence of low take-up, DARD have this year removed the standstill arrangements almost entirely (although stock coming from a market cannot be sent back to a market within six days) and increasing the scrutiny on dealer movements. If

[3] http://register.consilium.europa.eu/pdf/en/13/st00/st00037.en13.pdf

this is acceptable in Northern Ireland, we would question why a similar approach cannot be implemented in England.

Defra have now chosen to defer any changes to standstill until after the ten mile rule changes

Sheep Database

Defra are in the process of implementing recommendations on the sheep database, but are currently proposing to gold plate reporting requirements for farmers to 24 hours, rather than the 72 hours recommended in the Farming Regulation Task Force[2]. This would increase the pressure on farmers and could lead to cross compliance penalties for minor delays in reporting time.

- ***The NFU agree with the recommendation originally outlined in the Farming Regulation Task Force that stated movements must be reported within 72 hours***

We require backing and action from Defra to get involved in an industry / government animal improvement database to bring together and allow information transfer on issues including traceability, animal health (especially TB history) carcase feedback and farm assurance status to support disease eradication programmes and allow breeding developments.

- ***As a result we require investment in a cattle database initially, but with a view to expanding this to a multispecies database.***

EU regulation on Animal Health

TSE Controls in Small Ruminants

The Regulations relating to Transmissible Spongiform Encephalopathies (TSEs) define the skull including the brains and eyes, tonsils, spinal cord of sheep over 12 months (or permanent incisor erupted) as specified risk materials.

At present in the UK the spinal cord is removed from sheep that have one permanent incisor erupted by splitting the carcase. Other European countries and large sheep meat exporters such as New Zealand use suction/air pressure removal. To date, trials in the UK have not produced results satisfactory to the competent authority and the method being trialled was found to incur many of the same inefficiencies as splitting.

Continuing to require the splitting of the carcase incurs both costs for the processor and producer and increases uncertainty in supply chains, reducing efficiency.

AHDB estimates detail that the increased time to process an animal on the slaughter line, results in slower line speeds. One abattoir operator estimated that splitting slowed the line from 500/h to 200/h. At an estimated cost of running the slaughter line at £700/h this increases the cost per carcase from £1.40 to £3.50.

The carcase is devalued by as much as 40% by the splitting process, as a split carcase is an indicator of an older animal. AHDB estimates indicate a loss per lamb in 2009 of between £15 and £23 and the total cost to GB sheep producers being within a range of £23 million to £34 million per year, based on 1.5 million lambs over 12 months. In addition, splitting itself devalues the carcase with buyers preferring “whole” carcases as they can be hung to mature. This was estimated to be worth an additional £2 per animal loss in value.

[2] The Macdonald review recommended ‘where alternate reporting systems are provided, movements must be reported within 72 hours.

These are significant costs to an industry which is struggling with low returns and a lack of confidence to invest in production. We believe that the evidence for the need for this practice is weak. There is no proven link between the classical TSE's in sheep and vCJD in humans and there has never been a case of BSE found within a commercial flock of sheep. There is also no evidence to show that atypical scrapie can be transmitted to humans. Due to the age profiles of the national flock, we believe that any sheep that may have had contact with contaminated feed are no longer present.

- ***The NFU believes it is time to review the need to take out the spinal cord of small ruminants over 12 months of age with a view to either removing this requirement or increasing the age at which this practise is conducted.***

The legislation currently refers to the eruption of permanent incisors. This eruption happens at different times for all sheep with variation not only between breeds which mature at different rates but between identical sheep depending on diet. This means that farmers must check the mouths of lambs before they are sent to market and regularly leads to a situation where sheep are sent to market under 12 months of age and with not incisors erupted, only to have incisors erupt en route to the slaughterhouse, a short period after, requiring the lamb to be split.

This not only devalues the carcase to the producer, providing a great deal of uncertainty, but can also lead to logistical issues for the abattoir as these lambs may not fit with retail specification, requiring alternative markets to be found and more lambs then purchased to make up this shortfall. Moving to a fixed date in the year instead of an arbitrary measurement governed by many biological factors would help to reduce many of these inefficiencies without compromising food safety.

- ***The Government should call for change in Europe and the OIE to roll back TSE controls for sheep in the same way as cattle – there is no evidence that scrapie is transmissible to humans, and the regulation as it stands increases red tape for no measurable benefit.***

- ***Change the assessment of older animals from two teeth to a fixed date in the year following birth instead. This "cut-off date" would simplify the legislation, decrease costs for processors and give producers the confidence to send lambs for slaughter knowing that they will not be penalised if the incisors erupt early.***

- ***Continued investigation into practical alternative forms of spinal cord removal, where this would not lead to devaluation of the carcase. The current practice of splitting serves to gold plate our requirements compared to other EU member states and international trading partners such as New Zealand.***

Plant Health

As we have highlighted in our responses to the Balance of Competences review all regulatory decisions need to be based on sound science and risk. If a hazard based system is used (as in the new European Registration regulation 1107/2009) then it should only be used to identify which actives should then be subject to further risk assessment and risk mitigation. There are a couple of examples of existing European legislation that do not follow this principle.

The Drinking Water Directive sets an arbitrary and illogical limit for the amount of pesticide in drinking water which is not risk based (i.e. there is no indication of relative risk and the likelihood of an impact for such risk). This was the limit detection when the Directive was introduced and makes no sense at a time when detection limits are now much lower. The Drinking water limit is causing water companies and the agricultural industry to spend large amounts of money trying to meet this requirement at a time when neither side can afford it, for no obvious public health gain.

- ***The NFU recommends that the Government work with other member states and the European Commission to review and establish evidence-based thresholds for pesticides***

under the Drinking Water Directive ensuring that thresholds are explicitly related to risk in respect of human or environmental health.

The differences in the availability of pesticides across Member States and the rules applies are a source of significant frustration for UK farmers. The approval process needs to be harmonised and this policy should not just cover the models used but also their interpretation and implementation. There are a number of examples of inconsistency such as the use of low drift nozzles in registration process in other EU Member states. Also recent concerns have emerged over theoretical modelling risk being identified for nematicides that have already been re-registered in other MS with comparable environments and uses.

- ***The NFU propose that the system for approvals of pesticides is harmonised as far as possible across Europe to ensure equal access to products for all European farmers, and that that the approvals process is based on likely real field risk. An example here is for the UK to allow back to back approvals to be given to be harmonised with other Member States.***

Other Legislation impacting agriculture

Driver Certificates of Professional Competence

The Vehicle Drivers (Certificates of Professional Competence) Regulations 2007 implement the requirements of Directive 2003/59/EC requiring most commercial drivers of passenger carrying vehicles and goods vehicles over 3.5 tonnes to undertake Driver CPC training. This requirement will affect drivers in agriculture who use mini-buses to transport staff such as harvester workers and stockmen to the fields and also those using livestock wagons to transport cattle to market.

The Driver Standards Agency has recently issued guidance that highlights that even drivers who infrequently transport harvest workers or livestock as an incidental part of their job come within scope of the regulations and required to undertake 35 hours of periodic training. This, in our opinion, is a clear over application of the Directive requirements which clearly state that it should not be applied where the requirements would be a disproportionate economic or social burden.

We have repeatedly raised this as being an over application of the Directive and called for an exemption or special treatment for ‘incidental’ agricultural drivers. The DfT recently announced that the UK regulations would be changed to exempt valets and mechanics where they undertake incidental driving as part of their jobs. Whilst we acknowledge that the Minister has said that he will look again at how the scope of exemption can be extended to farmers, we would hope that the DfT would take a similar approach in issuing an exemption specifically for incidental drivers in the agricultural sector.

- ***As a result we believe there should be an exemption for those undertaking incidental driving (i.e. within 100km of the holding) in agriculture***

Lined Biobeds

Biobeds are a recognised method of reducing water pollution risks when surplus pesticides (including herbicides, fungicides and insecticides) are to be disposed on farm. They are constructed features designed to collect, retain and degrade pesticide residues arising from pesticide handling and wash down activities. Originally developed in Sweden, a biobed, in its simplest form, consists of a clay-lined hole filled with a mixture of topsoil, peat or compost, and straw. This mixture provides an ideal habitat for microbes which break down pesticides to the point where they present little threat of environmental contamination. Although the same breakdown process happens in soil, biobeds speed this process by binding the material more tightly and degrading it more quickly. Studies have shown that unlined biobeds remove over 99% of applied pesticide.

However, the Environment Agency has chosen to adopt an over-stringent specification requiring an impermeable liner in England, generating an industry in providing systems and adding significant cost to operation and reducing the affordable size of the device. When lined, waterlogged anaerobic conditions soon result with the result that the biobed becomes ineffective. Lined bio-beds have to be emptied more frequently and re-filled with fresh organic matter (a period of two to five years has been suggested). This contaminated waste then has to go to Landfill under licence and at a cost to the farmer.

The NFU can propose the following solution:

- **Remove the additional requirement for a liner and allow biobeds to work by evaporation and drainage without becoming overwhelmed with large volumes of water, and increase the uptake, beyond the current approximately 150, improving outcomes for farmers and the environment.**

Tractor and trailer weights and speeds

The Construction and Use Regulations 1986, which set regulatory baseline for tractor and trailer weights have not been updated in relation to agricultural transport since their implementation. They cover the current maximum legal Gross Train Weight (GTW) (tractor and trailer) of 24.390kg. The regulations are now seriously outdated as modern agricultural equipment, and technical developments, have progressed.

To address this disparity, an industry proposal has been submitted to the Department for Transport (DfT) asking for permitted speed and weights to be increased in return for an industry-operated opt-in annual testing regime. We included this issue in our submission to the Farming Regulation Task Force review in 2010 and whilst we have received the commitment that this issue will be consulted upon this autumn, we have still not seen the changes implemented allowing a wholly unsatisfactory situation to persist.

- ***The NFU would like to see tractor and trailer weights and speeds increased expediently.***

Feed (Hygiene and Enforcement) (England) Regulations 2005

The Feed (Hygiene and Enforcement) (England) Regulations 2005 transpose the requirements of European Regulation 183/2005. These regulations require the registration of all feed businesses from the primary production of feed to those who use feed. Farms that produce feed or use feed are therefore required to be registered with the local authority under this regulation. The EU regulations require farmers to keep records for traceability and stipulate the hygiene requirements that should be adhered to as well as feeding practices.

Furthermore Article 6 of the EU regulation requires that those farms that undertake on-farm mixing of additives or pre-mixtures are required to keep a HACCP plan. The regulations also state the requirements as to how farmers feed their animals.

Whilst we can see the need for feed businesses that use or supply feed to be registered and to keep limited records to enable traceability, we do not consider that it is necessary or proportionate for farms that undertake mixing of additives and pre-mixtures to implement a HACCP plan.

Mis-feeding additives and pre-mixtures beyond their recommended levels is not in the farmer's interest both in terms of the welfare of the animal and in terms of the costs involved. Farms are normally open systems and it is impossible to fully control all of the critical control points when an animal is grazing on pasture.

- ***As a result the NFU believe that, at the very least, further guidance or a code of practice should be issued to show how farmers can comply with HACCP requirements at a farm level. Compliance with such a code could help to show that the requirements of the European regulations are being met.***

Inspection of feed businesses including farms is undertaken in accordance with FSA Feed Law Enforcement Code of Practice. Whilst this code of practice does take into account the risk posed by the activities of the individual feed business, we would like to see greater recognition for membership of farm assurance as an indicator of risk, as agreed by the FSA Board in November 2012. Farm assurance schemes such as Red Tractor Assurance already ensure that an acceptable level of feed hygiene and feeding practice is maintained. Farms complying AFS conditions, or already demonstrating an equally high level of compliance, should be removed from the inspection regime.

- ***As a result the NFU recommends that the inspection regime should fall in line with the inspection regime for Food Hygiene Regulations where only 2% of farm assured premises are selected for an inspection.***

Rights of Way and agriculture

The de-regulation bill contains proposals for reform to legislation governing rights of way. Broadly we are supportive of the suite of measures contained within this draft bill regarding rights of way. However there are three areas which we think would be of merit for inclusion to help reduce the burden of regulation:

1. *A presumption against routing rights of way through farmyards and buildings*

- ***The NFU believe there is a need for a presumption within legislation in favour of diverting paths away from farmyards and other areas of agricultural working where safety or security is an issue. Such a presumption would enable Local Authorities to make more pragmatic decisions on the ground.***

Cases exist where farmers have applied to divert footpaths away from their busy farmyard onto an alternative route (often an existing and well-used permissive path around the buildings). However, despite having the support of the local highway authority, objections on the basis that the route was an historic one, and therefore should not be altered, have led the planning inspector to find that such diversions should not be granted. In some instances this is despite a local authority already possessing a local policy to divert in such circumstances.

A presumption in legislation to avoid farmyards and buildings would improve the safety and enjoyment of rights of way users in the countryside, reduce conflicts between farming practice and users, reduce bureaucratic burden on local authorities by reducing the risk of objections, and reduce the stress and burden placed on land managers by rights of way passing through inappropriate areas.

Such a presumption should be able to be waived at the discretion of the landowner / occupier.

2. *A set period during which an application for registration of a right of way can be made after use has ceased*

A right of way may be ‘claimed’ after a period of continued use. Section 31 of the Highways Act 1980 states that (subject to certain conditions and exceptions) if a path is used as a right of way “as of right” for a period of not less than 20 years, without interruption, the landowner is deemed to have dedicated the right of way, unless it can be shown that the landowner did not intend to dedicate a right of way. After the required period of use has been established, it is possible for an application to be made to have the route added to the Definitive Map formalising the right of way.

A farmer can show that they do not wish to dedicate any new rights of way on their land by signing a declaration under section 31 of the CROW Act. Such a declaration currently stands for a period of 10 years. However, there is currently no time period within which user claims for public rights of way must be brought. As user claims are calculated from the date the use is 'brought into question', claims for a right of way can be made where the 20 years of use is alleged to have taken place before any such declaration was signed and even 40 or 50 years ago and where no walked route currently exists on the ground.

Given the above, it seems reasonable that there should be a time period after any use ceases within which the claim of use must be brought, as is the case with village greens and other areas of law.

- ***As a result the NFU seeks for a time period for user based claims to a right of way similar to those for Town or Village Green applications under the Section 15 of the Commons Act 2006, which requires claims to be made within 2 years of any cessation of use at present (1 year of cessation as of 1 October 2013 in England, remains 2 years in Wales).***

This would provide certainty and clarity for land owners and the public and ensure that claims to a right of way remain in keeping with the most recent land use and function

3. *Gating of rights of way for livestock and security*

The NFU supports the extension of powers to erect gates or other works on rights of way crossing agricultural land for the purposes of preventing animals coming onto the land or escaping from it. Currently, whilst there is such a provision for footpaths and bridleways in section 147 of the Highways Act 1980 there is no such provision for restricted byways open to all traffic (BOATs). This is being rectified within Section 16 of the draft Deregulation Bill.

The NFU also sees merit in enabling the gating of a right of way on the grounds of security. Theft of farm machinery and equipment remains an ever present problem, rural theft cost an estimated £42.3 million in the UK during 2012 with tools, quad bikes and fuel the most commonly targeted items[3] Enabling highways authorities to gate footpaths, or byways to prevent vehicular access could prevent trespass and nuisance, access by travelling communities and theft of farm machinery and equipment.

This is especially important where footpaths are aligned on farm tracks where kissing gates could be installed alongside locked farm gates to enable the users of the right of way whilst preventing access from other vehicles. Such gates cannot be granted on a right of way by a local highway authority under existing legislation.

These measures to allow gating of rights of way would make it easier for owners to obtain permission to erect gates or other works where locally necessary, and by effect reduce the number of occasions where applications for an order modifying the definitive map and statement to show a previously unrecorded right of way are opposed by landowners. The local authority will have discretion in giving authorisation, and must be satisfied that it is expedient that such structures should be erected on the right of way before authorising them. This provides sufficient safeguard to the needs of users and the surrounding landscape such as walls or hedges.

- ***The NFU believe that measures should be implemented to allow gating of rights of way***

[3] NFU Mutual Rural Crime Survey 2013 - http://www.nfumutual.co.uk/ruralcrime

Industrial Emissions Directive

The Industrial Emissions Directive (formerly the Integrated Pollution Prevention and Control Directive) was borne out of the Integrated Pollution Control legislation, aimed at large industrial sectors such as chemicals plants and the energy sector. But, during negotiations on the draft Directive, pig and poultry units were brought in within the scope of the legislation**.** Fundamentally, we believe that the Directive provisions are more suited to industrial process sectors rather than livestock units, run by, more often than not, single farming businesses.

The costs of compliance to the pig and poultry sectors include meeting best practice environmental standards, permit applications, and on-going annual regulator fees.

- ***The NFU regard the regulation as wholly unsuitable for agriculture and believe that livestock units should be removed from within scope of the legislation***

We are also concerned that the BREF is in the process of being reviewed and the new draft may make complying with permit conditions more onerous for the farmer

Waste Regulations

We highlighted agricultural waste regulations in our response to the Farming Regulation Task Force but this issue remains a high priority for NFU members.

Wastes are frequently used productively in agriculture and, as such, are not regarded by farmers and growers as wastes but rather as necessary inputs to farm systems. Farmers have registered a series of exemptions which will allow them to undertaken day-to-day activities such as burning hedge clippings or storing waste plant material on land. Continuing with this approach undermines respect for what is actually hazardous and increases costs to farmers and the Environment Agency. Many of these activities pose a very low risk to the environment and we question the need for a regulatory regime to apply.

There are many new 'wastes' in England created by the EA in recent years including used cooking oil as biofuel, mud being cleaned out of a ditch, straw coming off the back of a combine, or hedge trimmings and use of similar materials in compost. These are all classed as waste when they would be recycled for use on farm.

We know that the Environment Agency can take, and does adopt 'low risk regulatory positions' for some low risk activities. This rules out the need for farmers to activity.

- ***As a result we would argue that farmers should not need to regularly apply for an exemption from needing a permit to do something that is perfectly reasonable and propose that the Environment Agency look at whether some currently 'exempt' waste activities could be covered by 'low risk positions'.***

Reservoir Safety - Flood & Water Management Act 2010

The Flood & Water Management Act 2010 changed how reservoirs are regulated to provide for a risk rather than capacity based approach to reservoir safety. Its clauses reduce the threshold by which the regulations apply from 25,000 cubic metre capacity (above normal ground level) to 10,000 cubic metres. This means that many on-farm reservoirs could be caught by a bureaucratic and costly set of compliance regulations. In England the implementation of these changes are being made in two phases. Phase 1 applies the risk based approach only to those reservoirs that are currently regulated, that is with a capacity greater than 25,000 cubic metres and was implemented in July 2013. Phase 2 may introduce the reduction of the threshold to 10,000 cubic metres, however Defra has stated that this is subject to a review of the evidence supporting the reduction.

The NFU has questioned the appropriateness, relevance and cost benefit of the introduction of this threshold when there are a number of existing policies and regulations relevant to the building of on farm reservoirs i.e. planning. The Government Response to the independent Farming Regulation Task Force found that "at present, there is no evidence to support a lowering of the current threshold for the regulation of high risk reservoirs from 25,000 to 10,000 cubic metres."

- **The NFU considers that, pending the outcome of the review of evidence supporting the reduction, the Government should redact the amendment within the Flood & Water Management Act lowering the threshold for regulation down to 10,000 cubic metres.**

If there is sufficient evidence to implement phase 2, the NFU recommends that a screening process is applied that focuses on identifying only those reservoirs of genuinely high risk to life and property. Thus the default position is to assume a reservoir below 25,000 cubic metres capacity is low risk unless proven otherwise. The process should ensure that the Environment Agency does not develop and maintain an unnecessary large register of 'reservoirs', many of which may pose virtually no risk to the public. Instead such resources should focus on those reservoirs which do pose a risk to the public. We believe strongly that guidance on the assessment of 'high risk' should be provided that allows the non-reservoir specialist to carry out a basic risk assessment without the expense of employing a panel or inspecting engineer in order for a reservoir owner to understand their own reservoir risk where they have been designated.

Funding arrangements for flood and coastal erosion risk management (FCERM) schemes

The Government's current funding arrangements for new flood defence schemes result in funding allocations to be allocated towards those areas offering the highest unit area return – rural areas, especially those without statutory designation will have low weighting for additional protection. The consequence being that England's most fertile farmland, best and most versatile grade 1, 2 and 3a land, will be at increasing risk of flooding. Schemes to conduct essential maintenance for the conveyance of water within lowland systems have progressively been reduced and as a result the extent and duration of flooding during 2007 and 2012 have had a significant impact on the agricultural industry.

The current approach mean, in operational terms, that the sector responsible for three quarters of the land area at risk of flooding, which provides of 40% of the nation's fresh fruit and vegetables, receives little national funding to help manage this risk; at a time when there are important policy signals to governments globally and domestically of the need to protect the capacity to produce food.

The NFU urges Defra to enable properly informed decisions to be made at local and national level by including consideration of food producing capacity (food security) e.g. as an outcome measure on the Environment Agency's Flood and Coastal Erosion Risk Management strategy. This would allow the Government to monitor over time and geographically the scale and impact of both flood and flood risk management activities (many of which generate the legal requirement for compensatory habitat) on the food producing capacity of the available (and finite) agricultural land and avoid the very real risk of an 'unintended consequence' which exists at the present time; where the government could find an unacceptable amount of highly productive (Grades 1, 2 and 3a) agricultural land has been lost.

The NFU have long made the case to Defra and the EA that the approach currently used to value farmed land leaves it vulnerable to cuts in the programme. This is because a narrow application of the Treasury's *Green Book* rules and Defra's *Flood and Coastal Defence Appraisal Guidance*
Economic Appraisal Supplementary Note to Operating Authorities: Valuation of Agricultural Land and Output for Appraisal Purposes which was last revised in May 2008. The 'multi-coloured manual' (which the EA use for FCERM valuation purposes) results in a valuation related solely to its land classification (LC) value. This is a very complex area of economics but suffice it to say, the result in our view is a significant undervaluation of farmed land to society.

The NFU therefore believe there is an urgent need to review:

a) **Defra's Flood and Coastal Defence Appraisal Guidance: Economic Appraisal Supplementary Note to Operating Authorities: Valuation of Agricultural Land and Output for Appraisal Purposes,**
b) **the multi-coloured manual,**

to ensure that farmland is properly valued in terms of its long term value to society and ensure that account it taken of long term climate change and sea level rise on areas such as the fens (which produce 40% of the England's fresh produce) so that such lands can be defended.

Given the current discussion regarding the future of CAP payments in the UK using a discounted market value on the core assumption that the Single Payment Scheme will go on indefinitely is wrong. This is a very complex and specialist area of economics and we would welcome further discussions on this critically important area for our members. Suffice it to say, for the purposes of this consultation, the future value of production is not part of the current valuation.

Nitrates Directive

The Nitrates Directive is widely recognised as outdated, prescriptive and inflexible, imposing high costs to agriculture, and particularly the livestock sector. We suggest the following proposals in order to reduce the costs and burden associated with this Directive on the agricultural sector:

- ***Defra should look to make improvements to the Nitrates Directive methodology in advance of the 2016 review of NVZs.*** As a result of lessons learned from the most recent review, changes need to be made to the methodology and we recommend an independent review is incorporated in the designations process to save Government and farmers significant costs by reducing the number of challenges through the appeals process

- ***Defra should look to improve its guidance and provide assistance for farmers to comply with the record-keeping requirements of the Nitrates Action Programme through means other than a lengthy pdf document***

- ***Defra should introduce the concept of Earned recognition to NVZs, specifically for farmers who produce and use nutrient management plans***

- ***Defra should look to develop and introduce a working methodology to introduce flexibility to NVZ closed periods, by tailoring dates to local conditions and taking into account extreme or atypical weather and harvest conditions.***