Written evidence submitted by the National Farmers Union [RAB0006]

European Scrutiny Committee Inquiry 'Regulating after Brexit'
Written Evidence of the National Farmers' Union (England and Wales)
July 2022

The NFU represents 55,000 members across England and Wales. In addition, we have 20,000 NFU Countryside members with an interest in farming and rural life. Our purpose is to champion British agriculture and horticulture, to campaign for a stable and sustainable future for British farmers. Creating the right conditions for a thriving British farming sector includes promoting the health, safety, and wellbeing of our members.

Summary

1. The NFU welcomes the opportunity to submit evidence to this inquiry. We have fed into numerous Government and parliamentary consultations and discussions on the subject over several decades, based on policy analysis and feedback from our members.

2. Over the last two years the government has embarked on a number of initiatives reviewing the UK's regulatory approach following Brexit, including the Reforming Regulation Initiative in June 2020; the report of the Taskforce on Innovation, Growth and Regulatory Reform (TIGRR), led by Iain Duncan-Smith, in June 2021; the BEIS consultation on reforming the UK's Regulatory Framework in July 2021; and more informal announcements on progress and intentions such as Lord Frost's summary of progress in September 2021 and the Government's 'Benefits of Brexit' position paper in January 2022. The government's Food Strategy in June 2022 will also have implications for the regulation of food and farming. Prior to Brexit, successive governments have pursued 'better regulation' agendas and consulted on cutting red tape and reducing the inspection burden (more recently including the Dame Glenys Stacey review of farming regulation in 2018 and Oliver Letwin's request for examples of gold-plating EU regulations in 2016). The NFU has engaged with all these and submitted information and examples. In February 2022, Jacob Rees-Mogg MP was appointed Minister of State for Brexit Opportunities and Government Efficiency, with a particular focus on reviewing and removing EU-derived legislation and regulation. In June 2022 he published the Retained EU Law (REUL) dashboard to assist and monitor progress in this regard. The government also announced a Brexit Freedoms Bill in the Queen's Speech in May 2022 to make it easier to amend and remove REUL, among other things.

3. In this evidence we will set out our principles for better regulation, answer those questions most relevant to the agriculture and horticulture sectors and provide examples and evidence to support our assertions.

4. Regulation of farming and rural businesses is a critical issue for the NFU and its members, given its significant impact on the sector. The NFU recognises the need for and value of regulation to protect the environment, human and animal health and the needs of consumers. We want to see a more certain and predictable regulatory environment for the whole sector – one that maintains these important protections while encouraging business growth and investment, as well as investment in R&D and innovation, which are all vital if the sector is to be competitive, resilient, environmentally sustainable and profitable.

5. The NFU believes that **the overriding principle of good regulation is that it should strike a balance between managing risk and harm from any given activity, economic or otherwise, and maximising the societal and economic benefit of that activity.**

6. The **principles** the NFU believes Government should follow in regulating after Brexit are:
    - Follow a common law approach as set out in the BEIS consultation
    - Adopt a proportionality principle
    - Promote and enable innovation and fair competition
    - Delegate discretion to regulators to achieve regulatory objectives
    - Use regulatory sandboxes
    - Enable feedback and iterative improvement
    - Conduct full impact assessments and scrutiny
    - Undertake meaningful and independent post-implementation reviews, i.e. by the Regulatory Policy Committee
    - Consider regulatory offsetting (i.e. one in, one out)
    - Use of earned recognition and data sharing to reduce regulatory burden and improve targeting.
    - Support industry-led initiatives

7. The NFU proposes the following legislative areas related to agriculture and land management as priorities for regulatory reform:
    - Plant Protection Products
    - Habitats Directive
    - Water Framework Directive
    - Drinking Water Directive
    - Nitrates Directive
    - Animal by-products
    - Veterinary medicines
    - Animal welfare

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Call for evidence questions

1. How was the UK's regulatory autonomy constrained when it was an EU Member State?

Agricultural policy, and more recently other aspects of environmental and commercial policy, are key areas of competence for the EU. For the UK, rules governing much of farming businesses' operations have been derived from our status as an EU Member State. Through directly applicable EU regulations, domestic legislation that implements EU directives and other aspects of EU law and guidance, agriculture has arguably been more exposed to EU law-making over the past four decades than any other sector of the economy**.** The European Union's 'Directory of EU legislation in force' confirms that the agricultural sector has the second highest number of EU legal acts in force, second only to external relations. There were 3268 acts (as at 1 August 2013) specifically classed as relating to 'agriculture'. When taken alongside 'Environment and consumers and health protection' (a further 1810 acts) it is apparent just how significant a role the legacy of EU legislation continues to play in farmers' everyday lives.

It is important to recall why the EU has competence for agriculture and plant health. Before Europe had a common market, each country had its own agricultural policy (and the UK had its own before it joined the EEC in 1973). The creation of the common market in agricultural goods through the Treaty of Rome necessitated the creation of a common agricultural policy to minimise distortions of competition that otherwise would have persisted were countries to have retained their own different agricultural policies. The Treaty on the Functioning of the European Union stipulates that "the operation and development of the internal market for agricultural products must be accompanied by the establishment of a common agricultural policy (Art 38)".

While avoiding distortions and ensuring a level playing field for competition was critical for the operation of a single internal market, regulatory decisions and processes frequently emerged with which the UK did not agree and actively voted against. For example, the EU's increasingly precautionary and disproportionate implementation of Plant Protection Products and GMO regulations. The Qualified Majority Voting meant that UK's regulatory autonomy was constrained. Requirements and decisions on contentious and emotive topics such as pesticides, GMOs and precision breeding were often politically motivated rather than being based on sound scientific evidence and regulatory principles. This continues to stifle innovation and harms or constrains the UK's agrifood sector with no benefit to consumers or the environment.

The significant impact on farm practice of EU legislation, and UK implementation thereof, has unsurprisingly been the subject of much campaigning for reform by the NFU and others.

This does not reflect an opposition to regulation but rather a reflection of often poorly drafted legislation, an overly politicised or dysfunctional legislative process, disproportionate requirements, and ignoring the evidence base. Indeed, over recent decades the government itself has repeatedly analysed, consulted upon, commissioned inquiries into and even set up new institutions focussed on improving regulatory processes, stakeholder engagement, implementation and enforcement.

Many problems and concerns are due to poor design or implementation, rather than anything inherently wrong with the identification of an issue requiring a regulatory solution. In practical terms, UK competent authorities and regulatory bodies not only had to work with the core legislation plus implementation guidance from the EU Commission, but also consider the views of EU Auditors on how regulation should operate. Often the views of EU Auditors have been at odds with the domestic regulator and its interpretation of the regulations. This could lead to a dysfunctional and adversarial process resulting in the imposition of financial sanctions in the form of disallowance of refunded expenditure from the EU. The significant costs of EU Audit driven infraction and recovery created a precautionary approach amongst many legislators and policy makers. The option to adapt and challenge EU legislation to make it more fit for purpose for the UK was therefore often not pursued.

There is now an opportunity to reform regulation not only in those areas ripe for divergence from EU law but also in the implementation of retained EU legislation. It is entirely possible to properly design and implement regulation to achieve its aims while allowing farmers to continue to do what they do best – provide a safe, sustainable, high quality and affordable supply of British food.

2. After Brexit, how can the UK now regulate differently?

The NFU believes that having left the EU, there is an opportunity to significantly improve the experience and development of regulation for the farming sector. Regulation that is fit-for-purpose and proportionate; relates to GB/domestic circumstances; enables innovation in businesses' response; is properly designed and implemented to achieve its aims; will enable farmers to continue to provide a safe, sustainable, high quality and affordable supply of British food and other products; and enable diversified farming businesses to carry out their business activity without disproportionate burden and cost. The NFU acknowledges that Government must strike a balance between developing regulations suited to the specifics of the GB environment and economy and the desire to keep trade barriers low with our major trading partners. However, it is also important that in all future regulatory development Government, and in particular the lead department for our sector, Defra, embraces the **five principles of good regulation set out by the Better Regulation Task Force: proportionality;**

accountability; consistency; transparency; and targeting. Those principles must be embedded as the starting point for any reform process including regulatory baseline setting.

The whole process of developing regulation and the subsequent practical implementation of the rules can also be improved with the sovereignty that has been gained from Brexit. This must include greater interaction with those impacted by legislation and associated regulatory processes, from policy development, through drafting rules and guidance and into implementation and enforcement.

When the UK was a member of the EU, the NFU had significant concerns about Government's tendency to gold-plate. This was recognised by some parliamentarians. For example, in 2016 Minister for Government Policy in the Cabinet Office, Sir Oliver Letwin, challenged Defra to go further in cutting red tape. The NFU was asked to identify problematic areas and examples of gold-plating, and we provided Sir Oliver with information on impact and possible solutions. Those still relevant are included later in our evidence to the current inquiry.

In the NFU's post-Referendum report "A Regulatory Regime That's Fit For Purpose", we set out a number of guiding principles for better post-Brexit regulation, which still hold true:

1) 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.
2) **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.
3) **Proportionate, risk-based approaches** across the spectrum of regulation should be pursued to encourage innovation and improve competitiveness.
4) 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.
5) 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**.

Central to delivering on these principles is good communication, a clear road map showing the review process, proposed direction of change and expected timescales. Following such

principles and having clear guidance will help to deliver a consistent approach across Government and in turn allow those regulated to understand better what is happening. The latter is vital as all those involved in the regulatory change will be operating for the first time in a non-EU legislative environment.

With the lesson of the current Ukraine crisis, and the publication of the Government's Food Strategy White Paper, there is also a compelling case for all new regulation to be assessed not just for its impact on individual farm businesses but also the cumulative impact on the UK's food security and resilience.

3. How is the Government regulating differently since EU exit and how could the process of doing so be most effectively undertaken?

There are certainly serious constraints on Government's ability to effectively regulate after Brexit. We would refer the Committee to the NAO report of 18 May 2022 **Regulating after EU Exit** , which examined HSE, FSA and CMA. The NFU contributed ideas and evidence during the development of the report, and Government officials were interviewed. Highly relevant to this current inquiry, the NAO noted "*All three regulators covered in this report have taken on significant new responsibilities and were allocated additional funding as a result of the UK leaving the EU. The regulators implemented measures aimed at ensuring continuity in their respective sectors on Day 1 after the transition period ended, in some cases this involved delaying new regulatory requirements, or extending deadlines. All three are building capability to match their increased responsibilities but are facing operational challenges that need to be addressed as they move away from interim arrangements. These include recruiting people with the necessary skills, bridging information and data gaps, and planning for the future when there is uncertainty over long-term workloads in some key areas."*

"All three regulators and the respective policy departments are at an early stage with developing strategies for reaching their future state, while still having to manage the operational challenges that have already arisen following EU Exit. Until long-term strategies are fully developed, there is a risk that regulators' current plans to meet operational challenges may be wasted effort and not align with longer-term ambitions."

Specific areas were identified, relevant to the farming sector, which are already constraining Government's ability to regulate effectively after EU Exit. All three regulators are struggling to recruit essential specialist skills, risking delay in regulatory decisions. Scientific skills are lacking in the FSA and the HSE's Chemicals Regulation Division (CRD), with the latter expecting it to take "a *further four years before it reaches the full capacity it has planned for its post-EU Exit regulatory regime"*. In relation to pesticides, or plant protection products (PPPs), expiry dates for active substances have been extended, and there is a backlog of

authorisations in the system. The industry suspects this is also partly responsible for continued delays in authorising GMOs for import for feed ingredients.

Both PPPs and genetically modified organisms (GMOs) were long-standing areas of concern for the UK government about the poor EU legislative process, and yet thus far the capacity for improvement post-Brexit is severely limited. Loss of access to EU systems for data- and information-sharing is also negatively impacting risk assessment work by regulators.

However, the NFU is increasingly concerned that Government is not doing anything substantially different on PPP regulation since EU exit. Defra is providing no policy direction or mandate to the regulator, the HSE. The CRD is therefore largely continuing to apply the regulation in the same way it did when UK was part of the EU. It is true that even under EU Regulation 1107/2009 on PPPs, the UK is able to make science and evidence-based decisions that differ from the increasingly precautionary and politically-driven decisions in the EU. For example, since leaving the EU the UK has assessed and set a different hazard classification for the fungicide mancozeb. However, because HSE is generally following the EU system, with the rigid and even 'gold-plating' approach about which the Cabinet Office was concerned in 2016, GB's interpretation of the EU regulation is now showing signs of being more conservative that the EU's.

On a potentially more positive note, Government is taking forward a Precision Breeding (Genetic Technologies) Bill, currently at report stage in the Commons. This aims to enable precision bred organisms that could have been produced through natural selection or conventional breeding to be regulated separately from GMOs, providing a route to market for improved varieties of crops and breeds of livestock. Currently, the EU regulates all these technologies as GM, so once all the legislation is in place England would diverge from EU rules. It should be noted that the European Commission is itself working towards separating new genetic technologies from GM through legislation to be proposed in 2023.

4. **What restrictions are there on the UK's regulatory autonomy as a result of commitments in the UK/EU Withdrawal Agreement and the UK/EU Trade and Cooperation Agreement? How might divergence in certain policy areas have practical consequences for the UK's wider relationship with the EU?**

The Level Playing Field (LPF) agreement under the terms of the Trade and Cooperation Agreement allows for each side to independently set their own laws, regulations and subsidy rules, whilst also giving each the right to take countermeasures where they believe they are being damaged by changes in the other party's subsidy policy, labour and social standards, or climate and environmental standards. If used too regularly then a review can be launched. There is a limit to how well the impact of these agreements can be understood

until the legislative changes have been made and are operational in practise, which will take many years.

On competition and subsidies, both sides have committed to maintaining their high standards of competition law, with further cooperation between competition authorities possible. Each side will be transparent in their subsidy policy, with each establishing or maintaining an independent body to have a role in their subsidy systems. A reciprocal mechanism has been agreed to allow either side to take rapid action where subsidies are causing significant harm to the other's industries. There will be an accelerated arbitration procedure where such measures can be challenged, with the potential for compensation if measures are used inappropriately.

On labour and environmental standards, the TCA includes reciprocal commitments not to reduce current levels of protection for workers, the environment or the climate, or fail to enforce laws and protections in these areas, while allowing each side to make their own regulatory or policy decisions. There will be co-operation between the domestic supervisory bodies to ensure effective enforcement, and these chapters will be governed by a bespoke Panel of Experts procedure. In regard to carbon pricing, each side will have their own systems, but will cooperate and consider linking these systems if appropriate.

As a general rule, compatibility in regulatory approaches between nations allows trade to flow more easily between them. The greater the regulatory divergence, the greater the trade facilitation costs incurred (e.g. extra paperwork and checks at the border, and potentially import restrictions or bans). Regulatory equivalence is a key element in securing future trade deals with partners, something the NFU has set out as a priority in our trade policy vision. This is particularly true of trading relationships between the EU and the UK as a third country. The level of friction occurring at the border will directly relate to the extent the EU and UK regulatory regimes are aligned. To access the single market trading partners outside of the EU must ensure that the EU's import standards are met. If UK regulation changes to the extent that UK product no longer complies with EU import standards, this could lead to UK goods being unable to reach the EU market. Equally, if UK regulation is modified so costs are greater for UK farmers compared to our EU counterparts, this could make our exports less competitive on the EU market. The NFU strongly believes that there can be divergence in regulations while maintaining equivalence with those of our trading partners, and Government can thereby provide for better outcomes for UK farmers without jeopardising trade. However, this is a delicate balancing act.

The EU already trades with third countries that have different regulatory regimes but are considered to deliver equivalent standards of safety and protection. This should be possible with a UK that diverges in certain policy areas. Indeed, the EU itself may also look to change its approach such that there is, in time, no divergence. For example, currently the EU is

considering how to change legislation to enable 'new genomic techniques' (precision breeding) could be part of building a more sustainable and resilient agrifood system and deliver its Green Deal and Farm to Fork strategies. There are also opportunities for the UK to achieve better regulation outside of the EU without diverging on the rules themselves, but by implementing a smoother, more predictable and better-functioning legislative system in terms of authorisations processes or enforcement.

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 certain commodities. In the future, changes in regulation must not unnecessarily undermine these standards. While the NFU believes that implementation or 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. As well as delivering protections and direct improvements, they also underpin the value of British produce more generally and the high levels of public trust in British food and farming.

5. How might Common Frameworks—introduced by the Government to ensure a common UK approach is taken where powers have returned from the EU which intersect with policy areas of devolved competence—affect the Government's ability to regulate differently after EU exit?

Before the end of the transition period, the Government provided very little substantive information on the progress of the UK Common Framework programme, leaving a great deal of uncertainty over what would be put in place once the European Commission's role in overseeing very substantial parts of the functioning of the UK market in agri-food products came to an end. It remains unclear how this oversight will be ensured and fully delivered in the future. We have still not seen comprehensive and effective frameworks in place and are concerned by the lack of close dialogue with impacted stakeholders, including farmers and their organisations.

There is an increased likelihood in those areas of agricultural policy that are devolved within the UK of a further divergence of implementation of regulation. There are 600 - 700 farming businesses in GB that operate across devolved boundaries. They have endured significant challenges under EU and domestic arrangements to date and must be considered in terms of impact of regulation after Brexit. Defra has in place a policy coordination structure with devolved administrations to minimise disruption. However, the NFU remains concerned about divergence having immediate and direct impact on farm businesses (e.g. differences in approach to animal movement recording; application of plant protection products authorisation regulation) and longer-term disadvantages (e.g. genetic technologies). A

coherent and cross-GB approach must remain the goal for agricultural regulation after Brexit.

6. What wider obligations—flowing from new UK free trade agreements—might affect the Government's ability to regulate differently after EU exit?

The NFU believes there is a significant risk that the FTAs currently being negotiated and signed (most recently with Australian and New Zealand for example) could lead to an increase in the volume of food imported by the UK which has been produced to different standards. This possibility is heightened by the simple fact that these deals involve widescale tariff liberalisation on imports, in some cases phased in over time, across a range of commodities and products that countries like Australia and New Zealand excel in producing and exporting, with no conditionality related to production standards. These recent FTAs have confirmed the UK's right to regulate, but they also create incentives for, and forums in which to discuss, equivalence and regulatory convergence. Such moves are potentially important in facilitating free trade, which can benefit UK farmers, but they also run the risk of permitting an increase in trade in goods produced to different standards which can put UK farmers at a competitive disadvantage.

The NFU believes there is a likelihood that where there are significant differences between the production standards of domestic and imported food which will compete with each other on our domestic market, the likelihood of regulatory convergence over time increases. There may be advantages or disadvantages to such convergence, depending on one's perspective, and it may be effected by changes in either, or both, UK and Australian laws, standards and regulations.

7. In which sectors is the UK well placed to maximise the opportunities afforded by its newfound regulatory autonomy and, conversely, in which areas might diverging from the EU prove more challenging?

8. **Of the priority sectors highlighted by the Committee (agriculture, data and financial services), where and how should the UK diverge from EU rules? Are there any specific examples of retained EU law that should be kept or revoked and/or replaced? What are the likely cost and resource implications of divergence and how can these be effectively managed?**

Within the agriculture and horticulture sectors there are many, many areas of regulation that could and should be improved in order to enable farm businesses to become more resilient, sustainable, profitable and competitive. Such reform is vital for the industry as a whole to deliver on its commitments to produce food, fibre and energy, contribute to net zero targets and deliver public goods. There is a great deal of legislation that applies across

agricultural and horticultural sectors that has long been the subject of concern, as well as sector specific rules and guidance.

In this evidence, we focus on the aspects that relate to EU law, highlighting how the UK (GB) could improve the regulations themselves and/or implementation. Some are areas identified previously as having been gold-plated by the UK when it was an EU member state, and these remain problematic and should be tackled as a priority if Government is serious about maximising opportunities of regulatory autonomy.

In brief, the priority areas are:

- Plant Protection Products
- Habitats Directive
- Water Framework Directive
- Drinking Water Directive
- Nitrates Directive
- Animal by-products
- Veterinary medicines
- Animal welfare

More detail is contained in the annex, below.

9. Should the Government adopt a particular approach to regulating in areas previously governed by EU rules? Should priority be given to forms of governance like legislation or should other methods like self-regulation be pursued?

The NFU strongly believes that frequency of regulatory inspections should reflect the analogous requirements of farm assurance scheme membership. Such 'earned recognition' uses 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 supports approaches that reward good practice, with verified adherence to given farm assured standards leading to less frequent statutory inspection. Greater data and information sharing between regulators and third-party voluntary schemes enables this to be delivered effectively. 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, LEAF and other supply chain farm assurance standards. Farmers that demonstrate they present a low risk of infringing on rules, and

those that go further through voluntary schemes should have this recognised when compliance with regulation is being assessed. Earned recognition should therefore feature in the design and implementation of regulation after EU Exit.

The NFU has identified 5 key principles to guide this approach.

1) We would recognise the potential complementarity of farm assurance to some regulatory activity whether directly or as a risk indicator. However, seeking to promote participation of voluntary commercial schemes as a means of delivering regulatory compliance is not acceptable.
2) The priority for Government should be to reformulate regulatory inspections before potential overlay with other private schemes. Businesses choose to follow assurance scheme standards as a commercial decision, and these often provide producers with a premium to enable them to go beyond the regulatory baseline. At this stage, therefore we are unable to support full integration of farm assurance into the regulation and inspection landscape but retain the view that a changed culture amongst regulators may provide an opportunity for an enhanced role to reduce burden and positively support behaviour change on-farm.
3) Regulators should not abrogate responsibility for inspections to assurance bodies, as assurance schemes do not cover the whole industry and do not necessarily have the expertise to inspect for all aspects of regulation.
4) We could not support a right for regulators to accredit schemes or set minimum standards. It is for schemes themselves to determine their own commercial purpose, business relevance and orientation in the marketplace, and to decide the standards and level of compliance that are included.
5) We support the principle that data can be shared or exchanged to reduce inspection burden on farm where that is undertaken with consent of the participating farm businesses. This should not include commercially confidential information.

It is vital that regulators understand that administrative burdens disproportionate to the desired outcome are damaging to productivity, have serious resource and cost implications for regulation and enforcement, discourage participation in publicly beneficial activities and damage the relationship between Government and industry. 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. The NFU's confidence surveys have repeatedly shown most farmers believed that regulation and legislation would have a negative effect on their businesses. Poor regulation is characterised by approaches that have not engaged in advance with businesses to fully assess impact and to consider how regulation is best targeted or implemented.

The NFU believes that rules must be designed in 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 considered better results are achieved, for example an exemption to hedge-cutting rules for oilseed rape growers that attempts to achieve a balance between cultivating a crop while minimising the threat to the nesting birds. However, effective implementation is key to fully realising the benefits of this approach.

A significant change that could be explored and that could have a transformational impact in some areas of policy, notably the authorisation of plant protection products, would be the opportunity for the Defra Minister or Secretary of State to remove themselves from any day-to-day decision-making process involved in implementing regulations. Since EU Exit, the Defra Minister/SoS is very much exposed as the final decision, and this inevitably means decisions can be subject to political influence, with all that that entails. The UK could look to other countries, such as Australia, which have a greater degree of independence between the implementation of the regulation and political decision-makers. This would free the process from potentially problematic political involvement, enabling a far greater focus on the science and evidence as well as the opportunity for greater transparency, which is especially important for emotive topics.

July 2022

ANNEX

Agriculture and horticulture cross-sector and sector-specific examples of targets and opportunities for regulatory reform

1. Plant Protection Products (EU Regulation 1107/2009)

Governs the availability of Plant Protection Products (PPPs) and thus impacts on farmer's ability to protect crops. The opportunity is to retain 1107/2009, but to implement it in a better and more efficient way, which will result in divergence as GB makes science and evidence-based decisions that differ from the increasingly precautionary politically driven decisions in the EU. Efficiencies and associated cost savings are sought, otherwise the additional regulator and industry workload, and cost of running an autonomous regulatory regime will result in companies making commercial decisions not to support active substances at renewal, and UK farmers will lose crop protection tools, not because they fail regulatory hurdles, but because the cost of the GB regulatory process is too high given the likely return from the GB market. Some express a concern that divergence on PPP availability could impact trade. However, the understanding is that producers would simply grow to the requirements of their market and this should overcome this issue.

The NFU is asking for the PPP regime to be operated more efficiently, under a robust science and evidence-based approach, so thus should deliver many benefits. If efficiencies and associated cost savings are not sought, it is clear the additional regulator and industry workload, and cost of running an autonomous regulatory regime will result in companies making commercial decisions not to support active substances at renewal, and UK farmers will lose crop protection tools, not because they fail regulatory hurdles, but because the cost of the GB regulatory process is too high given the likely return from the GB market. This will put GB farmers at a serious competitive disadvantage, compared to those in the EU and other markets. The future UK PPP regulatory approach needs to be fit for purpose – protecting the environment and the public along with effectively supporting productive and competitive agriculture and horticulture. Key principles of a new UK PPP regulatory approach should be that 1) continuing protection of human and animal health and the environment are priorities, 2) as is the need to ensure availability of necessary plant protection tools and promote innovation in plant protection technology, and that 3) maintaining and enhancing UK food security and improving agricultural and horticultural competitiveness and production in the UK is a priority. The UK regulator should utilize EU and other global authorities' regulatory assessments where appropriate. It should have flexibility in interpretation and use of guidance documents (which are not part of the regulation) and use of weight of evidence approaches. There should be proper consideration of impact assessments and the effectiveness of the regulatory system. The legislative approach should be clear, with a simple authorization process, and proportionality in the decision-making approach. The decision-making process needs to be faster, pragmatic and adaptable. In the case of 1107/2009 it needs to be kept, but implemented better and more efficiently, to create predictability and certainty in regulatory

outcomes, which in turn creates confidence in high levels of consumer and environmental protection, stability and opportunity for the users of PPPs, and helps incentivize investment and innovation among manufacturers of crop protection technologies. In the case of PPP regulation it is essential that efficiencies and associated cost saving are sought - otherwise the additional regulator and industry workload, and cost of running an autonomous regulatory regime will result in companies making commercial decisions not to support active substances at renewal, and UK farmers will lose crop protection tools, not because they fail regulatory hurdles, but because the cost of the GB regulatory process is too high given the likely return from the GB market. With respect to PPP regulation, Government needs to adopt a new approach to regulation with clear, credible and consistent science-based risk assessment. It needs to provide a mandate that empowers the UK regulator (HSE CRD) to modernize approaches, to better apply the regulation and interpret guidance, and use its widely recognized expertise to make evidence based decisions.

If required, the NFU can provide a detailed list of changes that could be made, while still retaining the regulation.

2. **The Official Controls (Plant Protection Products) Regulations 2020 (enforces and applies Regulation (EU) 2017/625)**

New requirement for pesticide users to register with government, implemented to ensure government is legally compliant with the legislation. The farming industry sees this requirement as an additional burden that duplicates other activity. It's difficult to see what the benefit is, particularly considering than government has no clear coherent position of regarding its future approach on PPPs regulation. There is self-regulation and other legislative requirements in place that already cover this policy area.

3. **Official Controls Regulation (EU) 2017/625, as applies to plant health at the border**

Particularly important for growers importing plant material for growing on. Government work in changing this policy area is already underway, after it scrapped new border biosecurity measures due to come into force in July. The future opportunity here is a specific one around giving growers the opportunity to self-regulate - the change would be to move biosecurity checks away from the border and give growers the opportunity to carry out the checks themselves as under a government run trusted trader type scheme. Regulating in this better way within GB should create efficiencies and lower biosecurity risks. We believe this will benefit GB grower businesses and GB biosecurity overall.

4. **Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 – (implementing Regulation (EU) 2016/2031 and Regulation (EU) 2017/625) and Regulation (EU) 2017/625 in relation to food and feed law, rules on animal health and welfare, plant health and plant protection products**

Applies to official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products. At the end of April 2022, the government announced that the remaining import controls on EU goods will no longer be introduced this year. Instead, traders will continue to

move their goods from the EU to GB as they do now. The government intends to publish a Target Operating Model in the Autumn, setting set out a new regime of border import controls, with an implementation target of the end of 2023. This new approach will apply equally to goods from the EU and goods from the rest of the world. SPS measures serve a vital purpose: protecting national freedom from animal and plant diseases that are expensive to control and threaten our ability to export to third countries (e.g. Foot and Mouth Disease and African Swine Fever). There are undoubtedly many benefits in terms of simplification, digitisation and streamlining the system, but this must not come at the cost of robustness. The concern is that developing new systems at pace will overlook potential risks and issues of concern. Biosecurity must be upheld. SPS checks have a vital role in minimising the risk of disease incursions via our food systems.

5. **Habitats Directive (Council Directive 92/43/EEC) (implemented through the Conservation of Habitats and Species Regulations 2017): Birds Directive (*Directive* 2009/147/EC) (implemented through the Wildlife and Countryside Act 1981).**

The implementation of the Habitats Directive has been too focused on the preservation and restoration of protected habitats, regardless of the social and economic costs of the measures. The Directives focus purely on maintaining current habitats, and do not consider the need to adapt to changing climate. It is, therefore, possible that in the long term, these Directives may have an adverse effect on biodiversity, as habitats and species have not been allowed to evolve to cope with changing climatic conditions. Generally, it is important to move away from the current precautionary system of site protections, give greater weight to economic and social factors in the decision-making process and promote nature's recovery alongside sustainable economic activities.

a) Impacts outside of the protected site

This causes issues for plans/projects outside of protected sites which have the potential to impact on the protected site. Issue commonly arise in relation to:

- Planning
- Applications for permitting
- Abstraction licencing

Can result in members having to carry out an assessment to prove, beyond reasonable scientific doubt, that there will be no adverse impacts on protected sites. Proof to this standard is hard to achieve. Can result in consents/permits etc being refused. As a result of the Dutch N cases, it is hard to get permission for anything (even replacements for existing infrastructure) in areas with high background levels (typically Ammonia or Nitrates in an agricultural context). If not resolved, could limit take up of initiatives like the slurry investment fund if applications can't get through the planning process and also delay environmental improvements.

Habitats Directive has resulted in requirements for all development to be "nutrient neutral" in some areas. Currently, this is often achieved through using farm land to off-set the

impacts of development (e.g. in the Solent area) but this is not sustainable in the longer-term.

b) Consents for activities within sites

Examples of NFU members having had consents for periodic activities (e.g. burning on moorland) which have had to be reviewed due to the potential impacts on priority habitats (e.g. blanket bog), on the basis that there isn't sufficient consideration of harm each time the activity occurs with a periodic consent.

c) Lack of future proofing

Sites are designated based on features/habitats found at the time of designation. Favourable status is then measured against the how well those features/habitats are doing. The aim is essentially to preserve/enhance the features and habitats which already exist. There is very little consideration of what the long-term outcomes for the site should be, or what adaptation may be unavoidable due to factors such as climate change.

It also means a lot of resources can be put into trying to preserve something when there is no evidence that the population is viable or what conditions would be needed for it to become so e.g. there is a population of pearl muscles in the River Clun, which haven't bred for many years. Other activities in the area (including farming) have been impacted by pressures to improve water quality to try to save the muscles.

d) Species licencing

The way species licencing for some species is carried out is also problematic. Some species of birds can attack young lambs. Farmers have to apply for a licence each time they need to deal with a problem bird, despite the welfare issues caused by this issue. For some species, it isn't currently possible to obtain a licence to carry out lethal controls for that species of birds to deal with that specific issue during the lambing period.

Potential solutions:

- There should be a 'technical feasibility test' built into the legislation, rather than a 'protect at all costs' approach to ensure that a proportional approach is taken. This is particularly important in the context of aquatic environments, where interaction with the Water Framework Directive can cause particular difficulties.

- Habitats Directive should have greater consideration for the socio-economic costs and food security impacts of implementation of the regulatory requirements. The current approach of doing something, without knowing whether that will have a positive impact is not an effective or proportionate approach, especially where there is a significant cost to other economic activities, such as farming in the area. The balance is weighted too much in favour of protection of habitats and species at the expense of other legitimate activities.

Interaction between the Habitats Directive and the Water Framework Directive:

The WFD sets targets for bringing water bodies into good condition, taking into account both quantity and quality issues. This has caused particular problems for water-based protected sites as some of our sites were designated because they were the best example of a feature we had, even though they were in poor condition. At the time of designation there was no expectation of bringing them into favourable status. However, as a result of the interaction between the WFD and the Habitats Directive, there is now a lot of pressure to bring those sites into favourable status.

In the Poole Harbour Catchment, this has resulted in a consultation on a potential water protection zone, although a farmer-led voluntary approach has now been implemented. The River Wye has also had calls for a WPZ, although at this point Defra has said they are pursuing other options.

These issues may be partly behind the Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018 (Farming Rules for Water issues), as agriculture is often seen as a significant cause of pollution.

SSSI regime

Each site has a list of "operations likely to damage the site"; "grazing or changing the grazing regime" often feature on those lists. In many cases these sites were grazed before the sites were designated, and the members didn't have a consent. NFU members have then gone into agri-environment; HLS operated as a SSSI consent. At the end of the HLS NE used the absence of consents for grazing to pressure farmers into entering new agreement as there was some doubt as to whether (and if so at what level) grazing would be permitted at the end of the agreement.

There are also over-lapping layers of protection, with SSSIs being designated under the **Wildlife and Countryside Act 1981**, SACs and SPAs (required under the Habitats and Birds Directives) being designated and regulated under the **Conservation of Habitats and Species Regulations 2017**. This can make the legislation quite complicated to navigate, which may impact members when applying for licences to control protected species.

6. Nitrate Vulnerable Zones (Nitrate Pollution Prevention Regulations 2015 – implementing Council Directive 91/676/EEC):

The NFU has criticised the blanket approach under NVZs, which impose the same restrictions on all farmers within the catchment of designated water bodies. Concern about whether the measures will actually deliver results, especially in areas where there are other sectors contributing to the pollution. However, we also dislike the outcomes focused approach under farming rules for water due to the uncertainty around the interpretation and application of provisions.

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.

7. Water Framework Directive (Directive 2000/60/EC):

The EU Water Framework Directive (WFD) requires water bodies to achieve a 'good ecological' status. WFD recognises the complexity of achieving good status in some cases and makes some allowances for this, but insists that ecology must not deteriorate. Whilst the no deterioration rule may seem reasonable in principle, it risks unfairly impacting on farmers and growers who abstract water. The WFD makes use of the 'one-out, all-out' rule to assess the ecological and chemical status of a water body, meaning water bodies can only achieve the headline target of 'good' status' where all underlying indicators also meet 'good' status. This rule gives a misleading impression about the true condition of many water bodies, hides real progress made against the underlying indicators by farmers and others, and ultimately makes the headline target too challenging. As an alternative to the 'one-out, all-out' principle, the NFU suggests allowing water bodies that achieve the necessary standard across all but one or two elements to still be assigned 'good status'. There could be a set of criterion to identify which elements could be overlooked in this way, such as the element having little effect on the overall health of the water body, the element being too costly to correct, and where correcting the element would cause unreasonable economic harm, as can be the case with correcting physical modifications and farm businesses.

a) Abstraction

Environmental Permitting (TBC, expected within the next 12 months. Likely to amend the Environmental Permitting Regulations 2016)

It is expected that abstraction licences will move into environmental permitting next year. We are expecting to see the Regulations which will achieve this later this year. Based on discussions/information we have to date, concerns include:

- Cost implications;
- Reduced certainty – environmental permits can be reviewed at any time, whereas I understand abstraction licencing is on a more fixed timescale;
- Implications for permanent licences as they will have to become full permits if certain events occur;
- Whether the regime is fit for purpose. A particular example in the agriculture sector is that the permit holder under environmental permitting has to be the operator. However, abstraction licences are usually held by the landowner, although the tenant/licencee may be using the licence with their consent. It is unclear how this will work in environmental permitting, and transferring the licences would have cost

implications (especially for in sectors where occupation of the land changes regularly) and it was suggested that a change of operator could be one of the factors which results in a permanent licence becoming a full environmental permit, which could have significant implications.

b) Revocation without compensation

The Environment Act 2021 made it easier for abstraction licences to be revoked or varied on environmental grounds without compensation. Many farming businesses are heavily dependent on the ability to abstract, and compensation would help businesses with the costs of implementing alternative solutions.

c) Alignment of timescales/policies

Where abstraction licences are to be revoked or varied, farmers need time to investigate and implement alternative solutions. So, there needs to be sufficient time between a farmer being notified of a revocation (or decision not to renew) or a reduction in volume for the farmer to, for example, secure funding, go through planning and construct a new farm reservoir. Water companies are allowed time to plan for changes, and farmers need this too.

8. **Drinking Water Directive (Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption)**

The Drinking Water Directive concerns the quality of water intended for human consumption. Its objective is to protect human health from adverse effects of any contamination of water intended for human consumption by ensuring that it is wholesome and clean.

There are questions over the scientific validity of some quality standards, which are precautionary and not related to human health or environmental impacts. For example, the 0.1 µg/l limit for pesticides of is based on the limits of detection at the time it was set rather than an accurate assessment of risk. The pesticides limit is currently having a detrimental effect on the agricultural industry with growers in the UK being forced to consider taking land out of productive agriculture or forfeiting productivity in order to meet an unscientific standard. This is particularly acute in cereal production where loss of pesticide actives due to the drinking water standard has resulted in increased difficulties in managing grass weeds in arable rotations. Mixtures or sequences of herbicides with different modes of action are vital to delay the development of weed resistance. The use of a limited range of products at sub-optimal rates promotes resistance and the resulting impact in cereal production has been year-on-year increases in grass weed resistance. Once resistance has developed it does not go away. The result is crop failures, rejection in markets and an increased risk of mycotoxins. This is not consistent with a sustainable approach to agricultural production. The 0.1 µg/litre EU limit for pesticides should be replaced with a risk based approach with individual values for each approved pesticide. For products like metaldehyde and glyphosate this could make orders of magnitude differences in permitted concentrations and allow water companies and regulators to focus on other, higher risk substances.

9. **Rights of way regime:**

This is often seen as inflexible, which makes it difficult for farmers to change routes to fit with farming practices. This makes it harder for some farmers to manage their risks (e.g. by temporarily or permanently diverting cross-field paths to the field edge so that the route can be fenced more easily to reduce the risks associated with walkers and livestock).
The main legislation is the **Highways Act 1980**, but provisions are also included in the **Countryside and Rights of Way Act 2000** (which also introduced CRoW access land), and the **Wildlife and Countryside Act 1981**. These domestic pieces of legislation retain some crossover with EU law, including the Habitats/Birds Directives.

There are also some inconsistencies in the different regimes. For example the Countryside and Rights of Way Act 2000 allows farmers to exclude dogs for limited periods in certain circumstances (Open access land and the coastal margin: how to restrict public access - GOV.UK (www.gov.uk)), and requires dogs to be on leads of 2m or less around livestock between 1 March and 31 July. However, those restrictions don't apply to footpaths/bridleways even where they cross CRoW access land, so dogs can be taken on footpaths, bridleways etc, or be off lead provided they remain on the right of way, even if CRoW restrictions are in force.

10. **Anaerobic digestion - Environment Agency Standard Rules Permit SR2021 No.8 for operating on-farm AD plant (Environmental Permitting (England and Wales) Regulations 2016 – implementing the permitting requirements of over 20 EU Directives as well as domestic requirements)**

This limits the use of inputs to a restricted range of wastes considered low-risk. Solutions include more liberal drafting / enforcement of permit conditions, and a broader range of permitted wastes (e.g. vegetable peel and trimmings from packhouses), resulting in improved resource use efficiency without the need to apply for a more restrictive general AD permit

11. **Drones (Plant Protection Products (Sustainable Use) Regulations 2012 – implementing Directive 2009/128/EC)**

Regulation of drone spraying for foliar fertiliser and crop protection products, with HSE currently considering the application of pesticides by drone to be aerial spraying. UK farmers lack access to agri-tech applications available in competitor countries. In falling behind the pace of reform in the EU, UK farmers will not have access to latest precision farming application technology. The permitting of drone application under aerial spraying regulations should be removed and replaced with permitting based on boom spraying, since latest drones can fly over crops at 1-2m height

Written evidence submitted by the National Farmers Union [RAB0006]

Sector specific issues

1. Livestock and dairy

- The Animal By-Products (Enforcement) (England) Regulations 2013 (implementing Council Directive 97/78/EC and Regulation (EC) No. 1069/2009) – permit on farm burial of fallen stock in certain circumstances or within guidance and following a risk assessment.
- Remove BSE rule for small ruminants i.e. no SRM removal required in sheep irrespective of age. This would negate the need to age and split carcases.
- Change beef labelling and marketing standards to allow beef from animals over 8 months to be labelled and marketed as beef (not beef Z which is currently outside retail spec).
- No change to animal transport rules as part of the welfare in transport agenda. i.e. leave overall journey times and vehicle design unchanged. Flexibility when issuing journey logs for import/export alternative routes and apply neutral time.
- Simplify and reduce cattle and sheep ID and movement inspections. Livestock Information Service (LIS) should facilitate reducing the inspection burden with the introduction of bovine EID, removal of paper passports and digital reporting, recording and online herd/flock register.
- Smarter application of the 6-day standstill – delivered through the LIS, which could apply rules to assess high and low risk moves.
- Current approach to Food Chain Information regulations is not fit for purpose for primary production – not relevant to producers and FCI rarely acted upon by FSA Official Vet or Food Business Operator.

2. Poultry

- Alternative proteins – EU authorised processed animal proteins derived from insects (insect PAPs) in poultry and pig feed, Aug 2021. Legislative barrier to the re-authorisation of PAP (Processed Animal Protein) and PIP (Processed Insect Protein) remains in GB so producers have a more restricted choice of feed proteins than EU competitors. Both PAP and PIP have merits in offering an alternative to soya (so, depending on source, could also give environmental/net zero benefits) and could be used in the poultry diet where other raw materials may not be available or have increased significantly in price.
- Auditing – inspections under Egg Marketing regulations (Commission Regulation (EC) No 589/2008) appear to be on farm more frequently even when no issues to follow up. 6 week average visit cycle for packing centres, more frequent if issue identified. Visits are lengthy and resource-intensive, with knock on impact for businesses with labours shortages.
- Should make greater use of sensor and camera technology, would also be more biosecure.
- Marketing regulations, particularly for eggs – review to improve resilience and adaptability, especially in light of increasing outbreaks of avian influenza. Explore

potential to align free range with the organic regulations (Council Regulation 834/2007) so marketing status is not lost as long as the bird has access to a range area for a third of its life (as opposed to losing free range status after 16 weeks under a government housing order).

- Phasing out cages – Government consultation expected. Producers need incentives to move to barn/free range or to come out of production altogether (currently being considered under payment by results section of the animal health and welfare pathway). But consider impact on affordability of eggs and consumer food security, and lack of land available for the range area for some producers.

3. Horticulture

- The EU Fruit & Veg Aid Scheme (governed by about 5 different pieces of regulation[1]) currently being phased out anyway and must be followed with effective and fit for purpose system.

4. Animal Health & Welfare

- UK Veterinary Medicines legislation - VMD (Veterinary Medicines Directorate) planning consultation this year on new UK vet medicines regulation following Brexit. VMD state intention to diverge little from new EU VMR (The Veterinary Medicines Regulations 2013 (required by Article 9 of Regulation (EC) No 178/2002)), which includes a ban on administration of antibiotics to groups of healthy animals. NFU believes prohibitions on veterinary medicines bad for animal health as can prevent vets and farmers from appropriately treating sick animals. NFU supports and promote voluntary approaches based on Responsible Use of Medicines Alliance (RUMA) responsible use principles.
- UK Government developing regulatory framework for animal welfare following Brexit, stating it must be future fit, practical and evidence based. NFU supports intention but concerned principles won't be followed. Within this framework is Animal Welfare Sentience Act 2022, Animals (Penalty Notices) Act 2022, Animal Welfare (Kept Animals) Bill, reforms to the Welfare of Animals (Transport) (England) Order 2006 (implementing Council Regulation (EC) No 1/2005) and an amendment to The Protection of Animals at the Time of Killing (Amendment) (England) Regulations 2022 (implementing Council Regulation (EC) No 1099/2009) NFU concerned re. tendency to gold plate animal welfare regulations beyond the reach of scientific evidence with impact of damaging competitiveness in international markets.

[1] See Regulation (EU) No 1308/2013 laying down and establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation);
Regulation (EU) No 2017/891 and 2017/892 laying down detailed rules for the application of Regulation (EU) No 1308/2013 in respect of the fruit and vegetables and processed fruit and vegetables sectors;
Commission Regulation (EC) No 1828/2006 detailing the specific eligibility rules for operational programmes. The Conditions of Operational Programmes section of this guidance provides details about the requirements of this regulation; and
The Common Agricultural Policy (CAP) (Protection of Community Arrangements) Regulations 2014 (SI 2014 No 3263) providing details on the protection of Community arrangements under CAP.