

Principles for a Future Regulatory Framework

Wildlife and Countryside Link

August 2019

Wildlife and Countryside Link (Link) is the largest environment and wildlife coalition in England, bringing together 52 organisations to use their strong joint voice for the protection of nature. Our members campaign to conserve, enhance and access our landscapes, animals, plants, habitats, rivers and seas. Together we have the support of over eight million people in the UK and directly protect over 750,000 hectares of land and 800 miles of coastline.

This response is supported by the following Link members:

- *Amphibian and Reptile Conservation*
- *British Canoeing*
- *British Ecological Society*
- *British Mountaineering Council*
- *Buglife*
- *Butterfly Conservation*
- *Campaign to Protect Rural England*
- *Campaign for National Parks*
- *Friends of the Earth*
- *National Trust*
- *Open Spaces Society*
- *People's Trust for Endangered Species*
- *Plantlife*
- *Salmon and Trout Conservation*
- *RSPB*
- *RSPCA*
- *The Mammal Society*
- *The Ramblers*
- *The Rivers Trust*
- *The Wildlife Trusts*
- *Woodland Trust*
- *WWF-UK*

Our overall aim is to 'regularise' the regulation of land management, ensuring that government oversight of land management matches the level expected for other sectors. This will allow government to use modern regulatory tools, and so to improve standards of practice and reduce risks and harms in an efficient manner.

The present system does not and cannot meet this aim. The regulation of land management is patchy and inconsistent, and this undermines public policy objectives and the productivity of other businesses.

The principles below are the core requirements for a functional system, equivalent to the oversight provided for other sectors:

Mechanisms for basic oversight

1. All land managers must be registered with the regulator

At the moment, Government does not know how many farms there are, or who is responsible for any given land parcel. This makes it extremely difficult to gain an overview of performance in the sector, to tackle bad practice or promote improvements. The creation of a single land-keepers' register to be held by the regulator would place "the onus of responsibility at any point in time with one individual", regardless of the business model used on the landholding¹.

¹ [Farm Inspection and Regulation Review final report](#), December 2018

2. Risky activities require a notification and licensing regime

Where activities carry a risk of public harm, a sliding scale approach is needed so that regulators are at least notified of all risky activities and can be certain that higher-risk actions are only carried out by properly trained and licensed operators.

Adoption of modern regulatory practices

3. Regulator(s) must be independent of government, but accountable for their performance in delivering compliance with primary standards set in law

We support the Farm Inspection and Regulation Review (FIRR) recommendation for the regulator(s) to be independent of government and report periodically and comprehensively to Parliament on the extent to which Government's stated priorities are being met. Primary standards should be set in law rather than by delegated authority in order to maintain accountability and avoid the temptation to improve compliance by moving the goalposts. Regulator performance should be measured against these standards. 'Day-to-day standards' can then be set by the regulator(s) and, as suggested by the FIRR, bring in the necessary sector expertise to create shared ownership, credibility and buy-in.

4. Coordinated use of incentives, advice and enforcement

We support the creation of a properly funded, well-coordinated and streamlined advice service that adheres to a set of clearly defined objectives set at a local level, integrating effectively with regional/national goals. This is critical to help farmers and land managers manage the change ahead, and to create a culture where they understand what is required, and why, for the successful implementation of basic rules and environmental and animal welfare incentives.

We agree with the FIRR that it would be effective for the regulator to oversee the accreditation of all advice providers. Sarah Church said in March², that Defra recognises there is a current lack of capacity and is looking at ways to address it. A stronger advice offer is clearly needed, both numerically and in terms of the penetration of advanced skills.

The FIRR firmly argues for advice and enforcement to be within the regulator's remit. We believe this would have environmental risks in some instances^A. In part, this is a question of coordination of advisory effort improving on current provision, which a Defra report³ called "complex and fragmented". Clear common ground exists between the FIRR and NGOs that there needs to be a strong link between incentives/advice and enforcement, and resolution of the current institutional dislocation in this regard. For example, farm management plans, co-developed by farmers and advisors, could be shared with enforcement officers so that they understand what actions the farmer has committed to.

Link has previously set out the case for responsibility for payments inspections sitting with the competent authorities who are more generally responsible for legislative enforcement, such as the Environment Agency. Regulation should be based on knowledgeable enforcement, with visits and monitoring undertaken by qualified inspectors⁴.

² At Westminster Food and Nutrition Forum conference on 14 March 2019

³ [Defra \(2013\) Review of Environmental Advice, Incentives and Partnership Approaches for the Farming Sector in England](#)

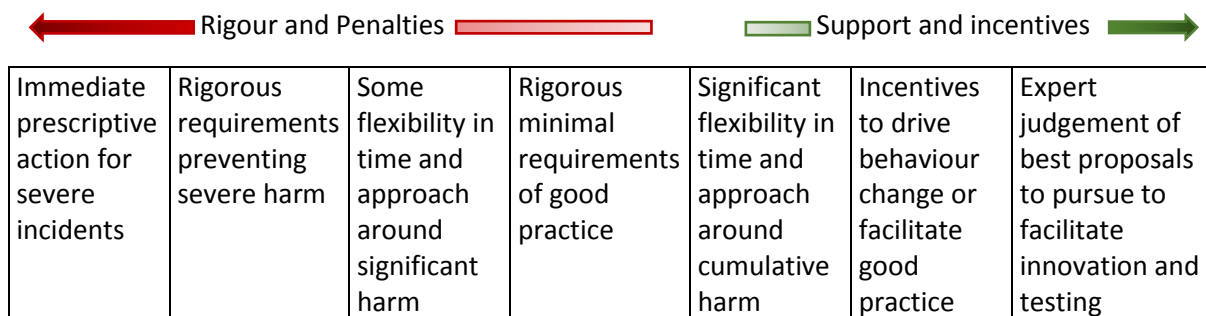
⁴ Link 2017. [A Sustainable Farming and Land Use policy for England](#)

There is also a potential role for accreditation schemes, such as UK Woodland Assurance Scheme^B.

There will remain a place for ‘rules-based regulation’, not just in relation to serious hazards, but where straightforward good practice is required to give certainty to the public, such as in maintaining rights of way.

5. Regulator(s) should employ a stepwise approach to enforcement

Regulators should start using the full range of enforcement options to deal with non-compliance and poor practice and the use of tools such as consent orders to establish responsibility for action, ideally ensuring that advice is provided in parallel. This is in line with the Scottish Environmental Protection Agency (SEPA) model, has been applied in some instances by the Environment Agency and was advocated by the Independent Farming Regulation Task Force in 2011 and the FIRR. The FIRR report makes clear that the entry point on its ‘spectrum of regulation’ can be anywhere on the scale.



Adapted from the FIRR final report

Defra says it is working on broadening the suite of enforcement tools that will be available to regulators.

Adequate resources and financial incentives

6. Regulator(s) must have the mandate, resources and enforcement tools they need to be effective

The major obstacle to effective compliance with existing regulation is the lack of funding. The Environment Agency only has the equivalent of twenty-eight full-time staff to enforce the Farming Rules for Water and related rules across England, each spending around a quarter of their time on regulatory farm visits (response to recent Freedom of Information Request). Yet the cost of increasing enforcement to a credible level would be relatively small (< £6million per year according to a rough estimate based on the SEPA model in ‘Saving the Earth’⁵). Government should recognise the significant cost savings associated with investing in enforcement.

However, the enforceability of regulations needs to be re-considered in terms of monitoring and measuring of compliance. For example, farmers must not apply pesticides or nutrients after rain or when ground is frozen, but farmers know that the likelihood of an inspector turning up as they are doing so is next to nil. Enforcing erosion legislation requires inspectors to observe it

⁵ WWF, Angling Trust and The Rivers Trust 2018. [Saving The Earth: A sustainable future for soils and water.](#)

happening.

A Government commitment to end the problem of non-compliance must be an essential objective of the adoption of a modern approach to regulation.

7. The polluter pays principle must be used pragmatically to raise standards

The Environment Bill will place a duty on the Secretary of State to lay a draft policy statement on environmental principles, including 'polluter pays', before parliament. The difficulty will come in interpretation, which may not align with that of the EU. The 'polluter pays' principle should be adopted within the Environment Bill and any regulatory proposals ensuing from the Agriculture Bill or the Government's response to the FIRR, both of which should cover all types of rural land.

We support a move over time toward the 'Five P' approach to regulation⁶ – where the 'potential polluter pays to prevent pollution'. The 'Five P' definition allows a system where actual pollution is negligible and spending is concentrated on preventing pollution rather than on sanctions to internalise its cost. This will require a clearly defined transition period in which underperforming farms should have a 'polluter responsibility' to accept advice, help and financing. The funding and regulation of this approach would need attention and careful management to prevent inefficient and open-ended grant dependencies.

Sanctions would not need to be set at the economic cost of pollution – instead we broadly agree with Richard Macrory's principles for regulation⁷, and in particular, that it is important to set sanctions at a level that deters deliberate non-compliance.

There are good reasons for the government not to apply the polluter pays principle in some circumstances. Preventing agricultural water pollution will create net economic benefits but the cost for individual farms may be substantial. For example, raising the standard of slurry stores is discussed in both the 'Saving the Earth' and the FIRR reports. The costs are too high for farmers to bear, and bank loans cannot be secured, so public financial support would be needed to achieve change. Such support should not be part of any ELM scheme (or equivalent policy) and must be conditional on the maintenance of environmentally sustainable stocking rates. In order to be fair on those who have already invested their own money to reach compliance, financial assistance for meeting the current baseline should be offered as loans.

In practice, the line between paying for public benefits and paying polluters to meet the regulatory baseline has been crossed repeatedly. However, this should be the exception rather than the rule when designing future financial assistance for the land-based sector.

Ensuring all land managers meet basic standards of practice and are rewarded for efforts beyond this level

8. All land managers must meet basic standards

Where environmental, animal welfare and public health standards are set out in law or regulations, they must be met by all land managers. This creates a level playing field for farmers, both within the UK and for trade with Europe, and a baseline on which to build future

⁶ From an RSPB position paper on the polluter pays principle, October 2018.

⁷ Macrory 2006. [Regulatory Justice: Making Sanctions Effective.](#)

Environmental Land Management (ELM) contracts and other schemes that benefit the environment and animal welfare. Aligned standards should apply to farmed and forested land, noting that individual land-holdings often comprise both. By basic standards, we mean the existing legislative baseline (listed in the FIRR report) and existing mandatory standards that have been set by regulators.

9. Basic standards must be high enough to deliver existing environmental commitments once full compliance is achieved, and so need to be raised particularly in relation to protected areas.

Low basic standards for agricultural practice are known to be a barrier to meeting government objectives, statutory conservation standards and international commitments such as the 25 Year Plan for the Environment, Water Environment Regulations, National Emissions Ceilings and the United Nations Convention on Biological Diversity. For example, agriculture creates 31% of the 'significant water management issues' damaging the health of our rivers and coasts, and Defra/Environment Agency analysis suggests the existing 'Farming Rules for Water' can only make a limited contribution to fixing this problem^c. This gap stands in the way of achieving the UK's objectives under the Water Environment Regulations, and the £8.6bn net economic benefit of meeting those targets.

We recognise that, in some cases, meeting existing commitments will require a significant ramping up of standards and their implementation by private landowners and businesses (including farmers). We propose an urgent focus on meeting the existing regulatory baseline and on protecting the UK's most precious natural heritage – our protected sites – with a transition that is as fast as is practically possible to full compliance with our existing environmental commitments. Where regulatory standards are being raised, this could be supported for a strictly time-limited period through ELM, or packaged with other Future Farming transitional payment schemes, for example as paired financial assistance for improving productivity and environmental performance. However, deadweight payments for actions the majority of farmers already do – such as appropriate hedgerow management – should be avoided. In some cases, long-term land-use change may be required at a landscape scale to restore protected areas; as long as any payment scheme avoids the creation of perverse incentives to worsen existing habitat conditions in the short-term this may be another case for ELM funding.

10. Receipt of public money should be conditional on meeting basic standards of practice

Land managers should only receive such payments if they adhere to basic standards in terms of farming, animal welfare and the environment, recognising that some individuals may need support initially to reach compliance. Where public support is greater, land managers should be expected to reach higher standards of practice – above any regulatory baseline.

There is a tension between the desire to encourage land managers into ELM and other incentive schemes (e.g. for animal welfare) and the proposal that payments would be conditional on meeting the regulatory baseline. Defra has indicated that meeting the baseline may be an eligibility requirement, but that scheme membership would not trigger a farm inspection. ELM is not due to be fully operational until 2025. Our ambition, shared with the FIRR, would be for regulatory compliance rates and the relationship between regulators and land managers to improve significantly during the agricultural transition period. Improved advice and strictly time-limited financial support for meeting new regulatory baselines must significantly raise compliance rates, such that by 2025, meeting basic standards of practice will be widely-accepted as an eligibility requirement for public funding.

We have set out our position previously: “Where there is a functional link between regulatory compliance and publicly funded investments (for example, investment in improving water quality and compliance with slurry storage regulations), penalties should be applied to any payments to take account of this where a breach is detected, in addition to any prosecution for a statutory breach.

“Maintaining the ability to apply penalties to payments for those found to be breaching regulations will be important to ensure coherence across public policies.”⁸

Link has also recognised previously the importance a proportionate approach to penalties, based on the Macrory principles⁹. Consideration of the severity/ intent/ recurrence/ duration of non-compliance should govern the approach to eligibility for public payments and the response to failings discovered by inspectors while under contract. This fits with Link’s advocating of the approach taken “to Scotland’s ‘General Binding rules’ (GBR). Where GBR breaches or pollution risks are identified, farmers are given time to address these issues before a second visit is arranged. If remedial action has not been taken, a third and final visit is then scheduled, and if no action is apparent a Fixed Penalty System is levied. Experience has shown that this model was successful in Scotland, in that 88% of farmers inspected after their first visit were either compliant, or had taken action to address failings identified”¹⁰.

^A On the question of whether the regulator(s) should be responsible for farm advice, we are concerned about the risk that, in some instances, land managers would conceal issues from the advisor or that advisors would find it difficult to balance the benefits of maintaining a positive relationship to bring about change and introducing the need for enforcement action. Consequently, we would argue that trusted farm advisors, independent of the regulator, are often better placed to work through issues that arise, and provision of these services should be maintained, or preferably increased. That said we recognise that an advisory role for the regulator would have the benefits outlined in the FIRR report.

^B There is a potential role in a modern approach to regulation for accreditation schemes, as seen in the forestry sector, where the UK Woodland Assurance Standard (UKWAS) sets very tough targets and has regular audits, for verifying sustainable woodland management. The FIRR discussed accreditation, recognising that at present there are wide gaps between most farming accreditation schemes and regulation, reflecting their different objectives.

^C Tighter regulation is urgently needed in areas where current measures are insufficient to achieve statutory conservation standards and international commitments. This may require tailored regulation (such as Water Protection Zones) and support regimes, especially in places that are most sensitive to pollution and wildlife damage.

But there is an argument that more stringent regulation is needed across the country if we are to achieve our obligations under the Water Framework Directive , National Emissions Ceiling Directive and Habitats Directive. The highest proportion (31%) of all pressures preventing England’s waters reaching WFD ‘good ecological status’ can be attributed to agriculture and land management. Yet the basic measures incorporated into the new ‘Farming Rules for Water’ will not be able to fully address this pressure. Modelling suggests that applying

⁸ Link 2017. A Sustainable Farming and Land Use policy for England

⁹ Macrory 2006. Regulatory Justice: Making Sanctions Effective.

¹⁰ Link 2017. A Sustainable Farming and Land Use policy for England; SEPA Management Advisory Group (2015) Minutes.

these rules will achieve only a small percentage reduction (<10%) in phosphorus pollution – to achieve the 2027 target of good ecological status, a 28-43% reduction in phosphorous pollution from 2015 levels is needed (as estimated in the 2nd Cycle River Basin Management Plans).

The <10% estimate is based on modelling undertaken at the consultation phase for the new rules in 2015 which showed between a 2.4% and 6.6% reduction in phosphorus losses from agriculture (Environment Agency (2015) Update to the river basin management plans for England's water environment). The final set of rules are a subset of those rules consulted on (apart from the soil testing, which is new), so they are likely to result in phosphorus losses somewhere between these figures.

Agriculture is also by far the dominant source of ammonia emissions, yet the UK will fail to deliver its 2020 and 2030 targets for emissions reductions without new regulation (as set out in the Clean Air Strategy 2019). Air and water pollution are having a direct detrimental impact on the condition of protected areas, in contravention of the Conservation of Habitats and Species Regulations and representing a failure in relation to delivery of the UN Strategic Plan for Biodiversity 2011-2020/Aichi targets.